

Attachment C

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
ADV. PRO. NO. 08-01789 (BRL)

-----x
SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,
v.

Rule 2004
Examination of:

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,
Defendant.

LEON J. GROSS

-----x
In Re:

BERNARD L. MADOFF,
Debtor.

-----x

TRANSCRIPT of testimony as taken by and before
PATRICIA MULLIGAN CARRUTHERS, Certified Court
Reporter, RPR, RMR, RDR, and Notary Public of the
States of New York and New Jersey, at the offices of
Baker & Hostetler, 45 Rockefeller Plaza, New York,
New York on Friday, October 22, 2010, commencing at
10:10 a.m.

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I N D E X

WITNESS

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Examination by Mr. Farley

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E X H I B I T S

IDENT.

DESCRIPTION

PAGE

Gross-1

Protective Order, L. Gross
(No Bates Numbers)

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Gross-2

Protective Order, E. Reisbaum
(No Bates Numbers)

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Gross-3

Email dated 6-29-07 from
H. Markopolos to L. Gross
(Bates Nos.: CGMH2769 - 2780)

63

Gross-4

"Fairfield Sentry Fund,
Ltd. (B Shares)
(Bates Nos.: CGMH1286 - 1320)

80

Gross-5

Email dated 1-11-07 from
A. Simone to A. Albin
(Bates Nos.: CGMH0332 - 0334)

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[REDACTED]

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having been first duly sworn according
to law, testifies as follows:

EXAMINATION BY MR. FARLEY:

Q. Good morning, Mr. Gross. My name is
Ryan Farley, and with me is Catherine Woltering, and
we represent Irving Picard who is the trustee in
this matter. I thank you for coming in today.

MR. FARLEY: Before we begin, let's
state who's here for the record.

MS. REISBAUM: Emily Reisbaum;
Clarick, Gueron & Reisbaum, counsel for Mr. Gross.

MR. BOCCUZZI: Carmine Boccuzzi with
David Livshiz from Cleary, Gottlieb, Steen &
Hamilton for Mr. Gross and Citigroup.

Q. This is a deposition pursuant to Rule
2004 of the bankruptcy code. You have received a
subpoena and you are here pursuant to that subpoena.
Do you understand that?

A. Yes.

Q. Thank you. I'm going to apologize in
advance, Mr. Gross, because you are by far the
smartest person in this room about what we're going

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1 to talk about today, and it's going to be
2 frustrating at times, but I ask for your patience
3 with me, and I will try to move things along as best
4 I can.

5 It's important that you answer
6 audibly to the questions. It's important that you
7 allow me to finish the question and then give an
8 audible response. Any time I'm unclear, please let
9 me know, and I will try to make my question as clear
10 as I possibly can. Perhaps we'll need your
11 assistance in that as well.

12 We can take a break any time you want
13 today. This is a fairly informal proceeding other
14 than the fact that we have to be cognizant of the
15 fact the reporter is here trying to record our
16 conversation.

17 Is there any reason such as illness
18 or medication that you can't give your clear and
19 good testimony today?

20 A. No.

21 MR. BOCCUZZI: One point. You
22 mentioned questions. To the extent there is an
23 objection from this side, do you all agree that if
24 one of us objects the other one doesn't have to? An
25 objection just preserves it for this side of the

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1 table?

2 MR. FARLEY: That's fine. Again,
3 this is a 2004 deposition which is not under the
4 Federal Rules of Civil Procedure. Objections are
5 very limited in this context. You're here as
6 counsel for the witness as a courtesy which the
7 trustee has given to most witnesses. That being
8 said, yes, absolutely.

9 MS. REISBAUM: Thank you.

10 MR. FARLEY: Obviously if there's
11 issues of privilege, please do object.

12 Q. Have you ever been deposed before,
13 Mr. Gross?

14 A. No. I haven't.

15 Q. If during the day I refer to
16 Citigroup as Citi, you'll understand that I'm
17 referring to the entity at which you worked.
18 Correct?

19 A. Yes.

20 Q. If it's important we'll make a
21 distinction.

22 A. I just mention there are many Citi
23 entities.

24 Q. Absolutely. It's just natural that
25 sometimes we'll slip into "Citi."

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1 You received a subpoena. Did you
2 make any effort to look for documents in your
3 possession that were responsive to that subpoena?

4 A. No.

5 Q. Do you believe that you have any
6 documents related to Madoff in your possession that
7 you continue to possess?

8 A. Let me say no, and the reason I
9 didn't look is because all of the documents I have
10 from work are at work. I'm no longer working at
11 Citi. So anything work-related would be at Citi and
12 not in my possession.

13 Q. When did you leave Citigroup?

14 A. My last day in the office was in
15 November of 2008, and then I officially -- The
16 separation was effective in February, 2009.

17 Q. And when you left Citigroup in
18 November of 2008 did you take any documents with
19 you?

20 A. I guess it depends on what you mean
21 by "documents."

22 Q. It's a fair question. What I'm
23 talking about is, other than personal items, did you
24 take any work-related documents with you after you
25 left Citigroup in November of 2008?

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1 A. Yes.

2 Q. And were any of those documents to
3 the best of your knowledge -- Recognizing this is a
4 long time ago, do any of those documents have
5 anything to do with Madoff, Madoff feeder funds,
6 BLMIS?

7 A. No. They were the type of things
8 that was standard for me to work on, publications I
9 had written and so on.

10 Q. Have you reviewed the subpoena you
11 received in this case?

12 A. Yes.

13 Q. And to the best of your knowledge do
14 you believe that you have at home any documents that
15 would be responsive to that subpoena?

16 A. I guess it's a question of the time
17 frame.

18 Q. And what's the question?

19 A. Are you asking about anything that
20 happened when I was working at Citi?

21 Q. Anything that happened. Very
22 generically here. We're here to discuss Madoff, the
23 Madoff world, Citi's involvement or not involvement
24 in that. What I'm trying to understand, Mr. Gross,
25 do you believe that you have documents at home, not

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1 from your work, but at home that may or may not be
2 responsive to our requests asking for Madoff
3 documents?

4 A. I'm not sure.

5 MR. FARLEY: We'll make a request
6 that the efforts are made to determine if Mr. Gross
7 has documents that might be responsive in his
8 personal possession.

9 MS. REISBAUM: We'll consider your
10 request. If you put it in writing --

11 MR. FARLEY: There's a subpoena
12 that's been issued.

13 MS. REISBAUM: We can talk about
14 that.

15 Q. Let me start. Briefly to get a sense
16 of your background why don't you tell us a little
17 bit about your educational background and then we'll
18 talk about your work experience.

19 A. I went to University of Chicago
20 undergraduate from '82 to '86. I studied math. I
21 was abroad in my junior year in Israel for a year.
22 I studied philosophy at the University of Chicago
23 until 1993 in graduate school. While I was there I
24 taught math and philosophy courses as a teaching
25 assistant. I worked in the biophysics lab and

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1 published papers there and had other assorted jobs
2 on campus.

3 Q. Any other postgraduate work?

4 A. The philosophy I mentioned and then
5 the biophysics lab. I published papers but did not
6 take classes.

7 Q. What about your work experience? Can
8 you give us your background after you left the
9 University of Chicago?

10 A. In finance I worked on the floor of
11 the mercantile exchange with a bunch of locals who
12 were trading commodities and options and futures.
13 And I was there for six months. I helped them trade
14 and also rewrote their software.

15 I worked for a trading firm based at
16 the American Stock Exchange that had people trading
17 on the floor and also people trading upstairs. I
18 worked there for about six months. I was the
19 assistant manager, programmer, research person, and
20 then I joined Salomon in '94 through the mergers
21 until I left Citi.

22 Q. And just give me a sense
23 geographically. When did you leave Chicago and come
24 to New York?

25 A. '93.

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1 Q. What brought you to New York?

2 A. The job at the American Stock
3 Exchange at the firm located there.

4 Q. What were your different positions at
5 Citi or one of the Citi entities?

6 A. I was hired into the derivatives
7 research group, hired without a title at the time,
8 and then I was working for someone there and also
9 someone who worked on the floor doing product
10 management, and then over time that product
11 management role became a desk-based research role,
12 so I was first an employee of that group, and then I
13 was head of the US. We called it research at the
14 time, although it's now called strategy, and became
15 the US head and then became the global head of
16 derivative -- equity derivative strategy, and then
17 probably around 2006 or 2007 I also became head of
18 something called multistrategy which includes equity
19 derivatives but was also a coordinated effort
20 between strategy groups involving convertibles,
21 program trading, credit, and event-driven stock.

22 Q. And what were your duties and
23 responsibilities as head of the derivatives research
24 group?

25 A. We were -- I primarily supported the

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1 salespeople who were covering institutional
2 accounts. We had various roles. One was to provide
3 trade ideas, publish ideas for customers. A variety
4 of customers, various types of ideas. The second
5 thing was consulting, so customers would ask us for
6 different types of help analysis, and we would
7 provide that to them. Either very simple things or
8 very complicated things. Anywhere in between. We
9 were marketing, so we met customers one on one, and
10 we also spoke at conferences and also did things
11 like dinners and social occasions with customers.

12 We did a structuring, so for some of
13 the complicated transactions that were in our domain
14 we would do the structuring of that. Primarily
15 things involving volatility and variance swaps, and
16 the last thing we did was internal consulting, which
17 means if any other part of the firm needed our help
18 we would treat them the same way as a customer and
19 provide analysis.

20 Q. Were you involved in structuring
21 total-return swaps?

22 A. Yes.

23 Q. What about structured swaps?

24 A. Not directly.

25 Q. And in terms of research what type of

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1 research or research function did your group provide
2 to Citi? I'm trying to understand how the research
3 group --

4 A. We weren't part of the research
5 group, which is located in a separate building. And
6 it was because of, you know, regulations was under
7 different rules than we were, so officially from a
8 legal point of view we were called sales literature
9 which means we didn't have to do all the things that
10 research people had to do including all the
11 settlement issues.

12 Q. The Chinese wall issue?

13 A. Reg C, et cetera, so we could
14 basically write about anything we wanted that was
15 topical, so we didn't have to restrict ourselves to
16 a certain class of thing we covered, for instance,
17 and we didn't have to write about something if we
18 didn't want to. We would try to write things that
19 were appropriate for different types of customers,
20 so customers are macro hedge funds. Some are
21 arbitrage hedge funds. Some are volatility. Some
22 are event-driven. Some are fundamental, so we try
23 to have ideas that always refer to derivatives or
24 something related to derivatives that would be
25 appropriate for those different types of accounts.

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1 So in the course of, let's say, two
2 weeks we would hope to have one or two ideas in each
3 category, and some ideas would appeal to more than
4 one type of category. Some are very broad. Some
5 are very narrow, and the idea would be that the
6 salespeople -- This was distributed through email
7 and web site and through phone calls.

8 The salespeople would call the
9 customer and say, Here's an idea, and either they
10 would do the idea, which means we would get the
11 commission for it, or the idea would lead to another
12 conversation which would lead to something else.

13 It was either used as a way to start
14 business, start a conversation, or recommend trades,
15 so similar to the role that the analysts played with
16 the research salespeople. We provided a similar
17 role with our derivative salespeople.

18 Q. Did you personally have a special
19 expertise or something you particularly focused on
20 more than other types of research or other types of
21 projects?

22 A. Compared to other firms or other
23 people?

24 Q. Compared to other people in your
25 group.

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1 A. In my group.

2 Q. Yes.

3 A. Well, I was head of the group most of
4 the time, so most of the time I was directing other
5 people what to do. I would say I focused more on
6 the big picture. Macroenvironment, the sort of
7 what's-happening in the big picture from like
8 bird's-eye-view derivatives as opposed to focusing
9 on smaller situations. That requires more
10 experience and broader perspective.

11 Q. How many people worked for you in the
12 equity derivatives group at Citi roughly?

13 A. Globally between 8 and 12 depending
14 on what time it was. The people in the US worked
15 directly for me, and the people in the five other
16 offices co-reported to me and the regional heads.

17 Q. Who were the people in New York who
18 reported to you, Mr. Gross, if you remember their
19 names?

20 A. There's 12 years. You want me to
21 tell you everybody?

22 Q. No. That's a fair point.

23 A. I can try.

24 Q. Well, why don't you try?

25 A. Lars Kestner, Jay Sarkar, Randall

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1 Fairman, Ryan Gould, Amir Heravi, John Chiang,
2 Carsten Schwarting, Andrew Olcheck, Wenbo Zhou, Sara
3 Leventhal, Andrew Rosen, David Park, Roy Baladi,
4 Joanna Keh. I may have forgotten one or two.

5 Q. Did anyone at Citigroup Global
6 Markets Limited report to you or have a dotted-line
7 report to you?

8 A. I'm not sure. With more
9 clarification I can answer. Can you tell me what
10 entity that was?

11 Q. Are you familiar with the entity
12 Citigroup Global Market Limited?

13 A. If you tell me that's the
14 broker/dealer or the bank or a certain subset I can
15 tell you whether I did or not. I worked for the --
16 what's outside known as Investment Bank which was at
17 different times known as Global Marketing Bank. It
18 had a variety of names at different times.

19 Q. Did anyone from London have a
20 dotted-line reporting to you?

21 A. Yes.

22 MS. REISBAUM: Objection. Dotted
23 line.

24 Q. You mentioned that some people
25 co-reported to you. I'm interpreting that as a

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1 dotted line. Was anyone who you believed
2 co-reported to you was based in London?

3 A. Yes.

4 Q. Who were they?

5 A. Philip Kauer, Gerry Fowler, Pete
6 Clarke, Lamia Outgenza, Dharmenda Patel, known as
7 DP, Etienne -- I'm sorry. I don't know his last
8 name. Dimolayer or something. I could be wrong
9 about that. Definitely Etienne was his first name.
10 And there may be others as well. If you ask me
11 later maybe I'll remember more.

12 Q. That's fine. You said you left Citi
13 in November of 2008.

14 A. That's right.

15 Q. What were the circumstances
16 surrounding your departure in 2008?

17 A. I resigned.

18 Q. Did you leave voluntarily or
19 involuntarily?

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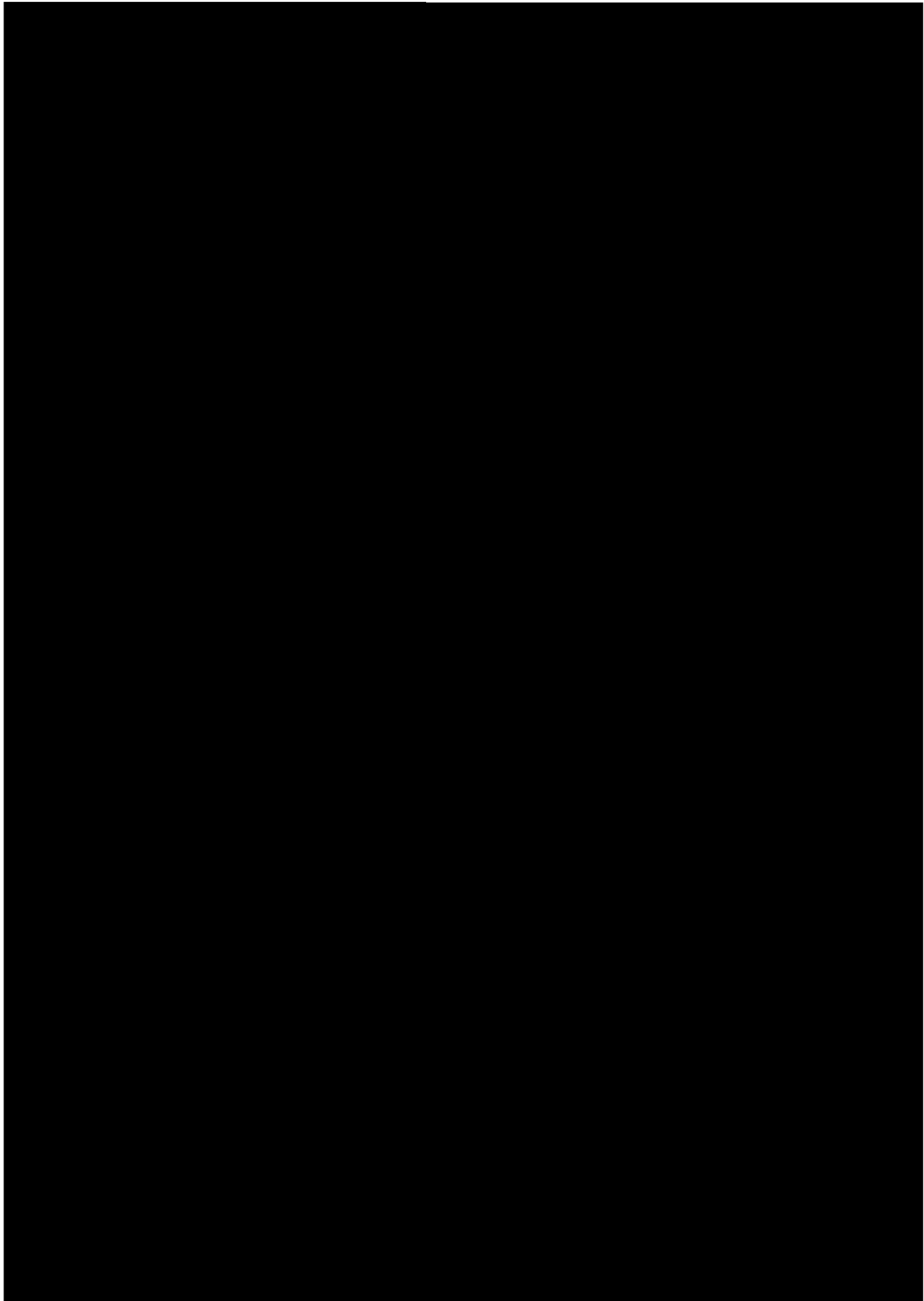
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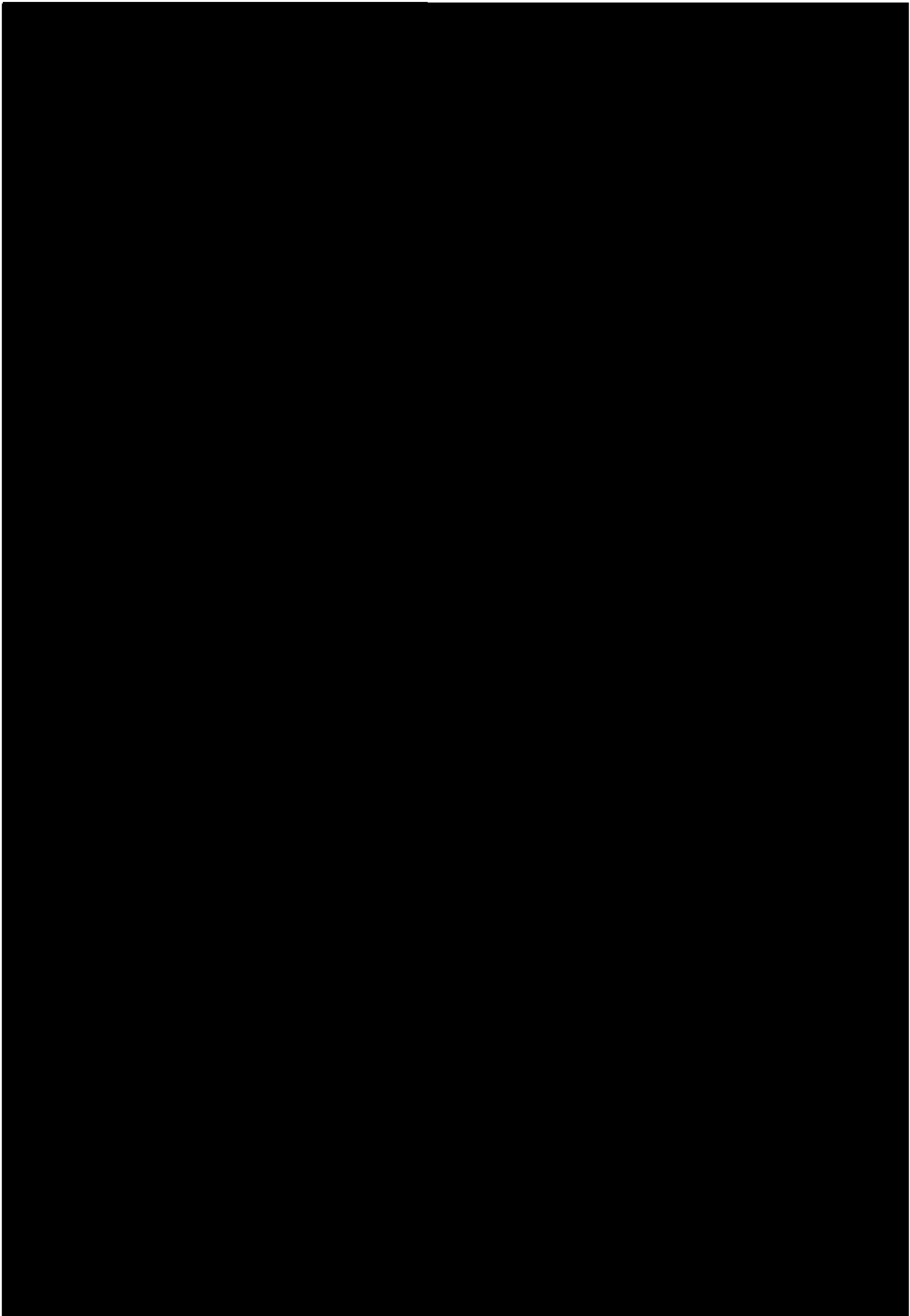
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1 Mr. Gross?

2 A. I trade from home.

3 Q. What type of trading do you do?

4 A. I trade options and option-related
5 products derivatives, equity derivatives.

6 Q. Can you be a little more specific
7 about the type of products that you trade; equity,
8 fixed income?

9 A. Anything -- I trade through a --
10 through a sink or swim, which is an on-line
11 brokerage that's -- where I trade through, and I
12 trade through the equity derivative platform, but in
13 that platform there are also ETFs, and the ETFs are
14 also linked to things that aren't equities, so it
15 trades like an equity, but some may be related to
16 commodities or bonds or currencies, etc., so I trade
17 the options, and I trade the stock in the options,
18 and also sometimes I'll just -- maybe just trade
19 stock by itself in very limited situations.

20 Q. And outside of the trading you do at
21 home do you currently hold any other positions?

22 A. No.

23 Q. Was your group, the equity
24 derivatives research group, a profit center at Citi?

25 A. We were technically called the

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1 strategy group after the settlement. I would say
2 not directly. We were closely associated with the
3 sales group, and the sales group was the profit
4 center, and our value to the firm, or most of our
5 value to the firm, came from the fact that we made
6 them more productive, so the sales -- Basically I
7 would say an arm of the sales group, and there are
8 times when we actually would, you know, do the bulk
9 part of actually executing -- I'm sorry. -- of
10 taking an order because it was a complicated order
11 because the salesperson would struggle with this.
12 There were times when actually we were doing a sales
13 role, but I would say an auxiliary part of the sales
14 group.

15 We also helped the traders as well,
16 so we had value there, that we helped them, but they
17 were the profit center, so I don't think we were
18 treated like a cost center -- and also has a
19 negative connotation. That's who you fire first.
20 Right? And that's who you put in a separate room.
21 I would say we weren't treated -- we were treated as
22 a profit center because I think the management saw
23 us as very valuable, but in terms of what actually
24 happened, we helped other people make money as
25 opposed to do it directly ourselves. Is that clear?

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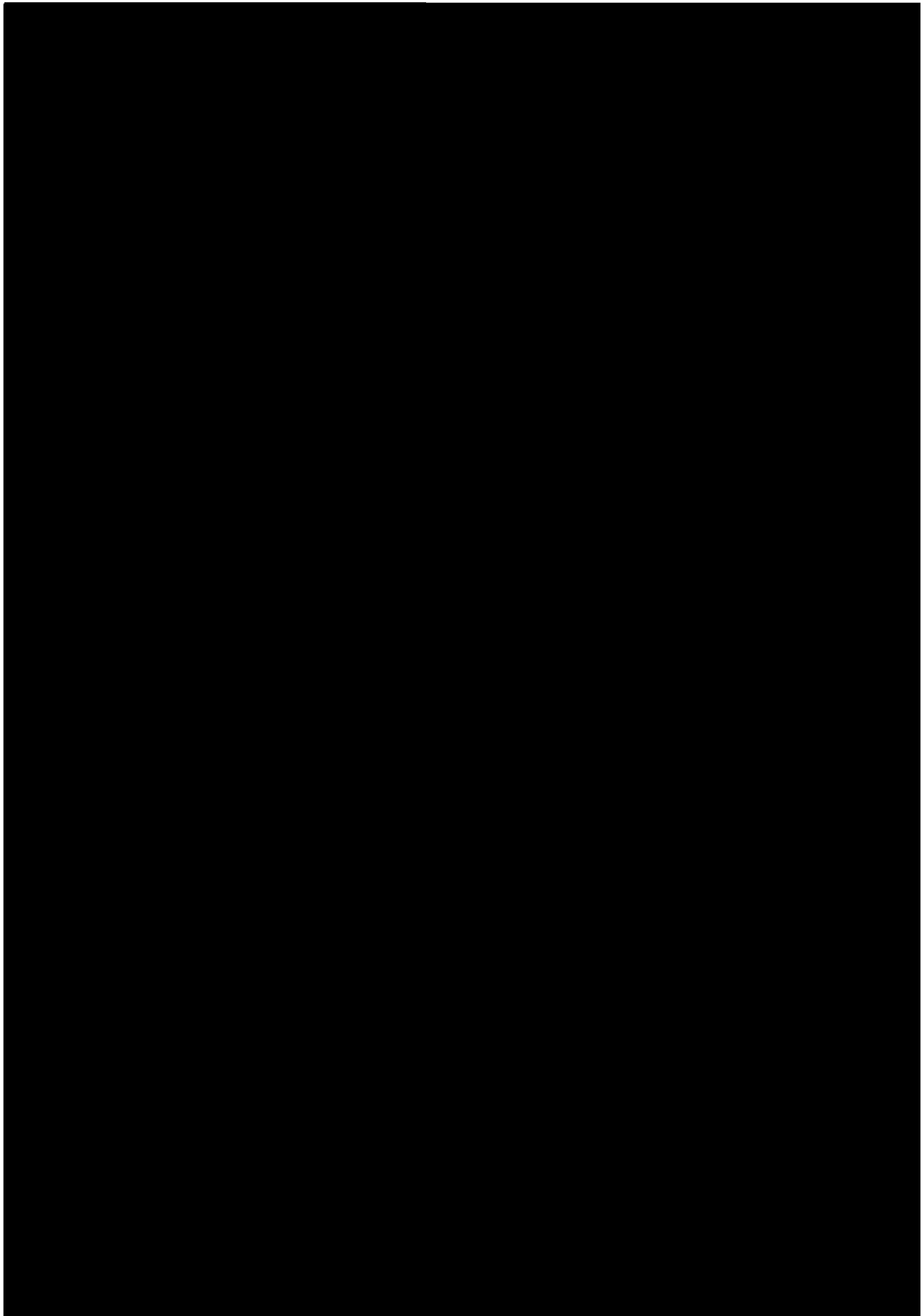
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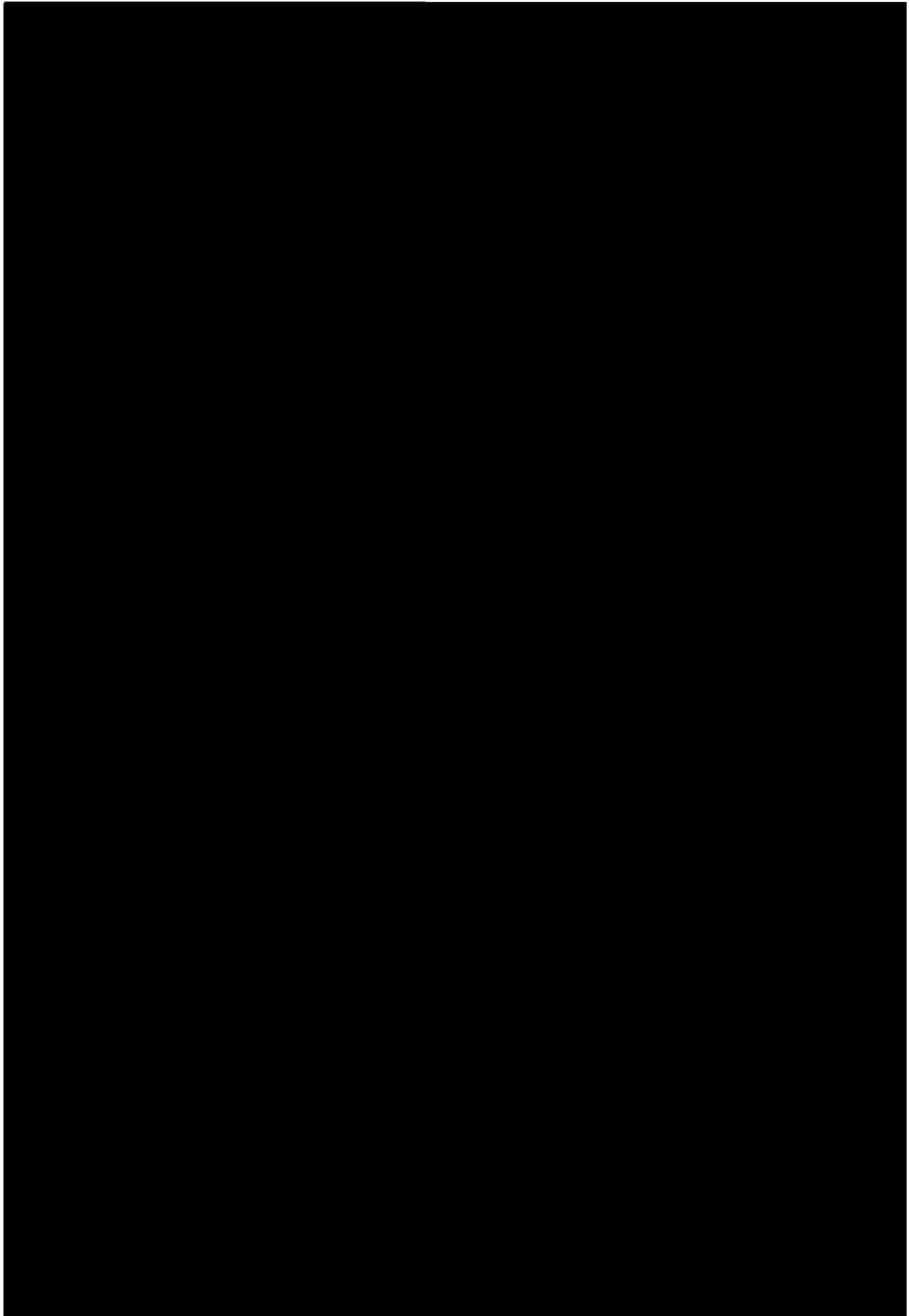
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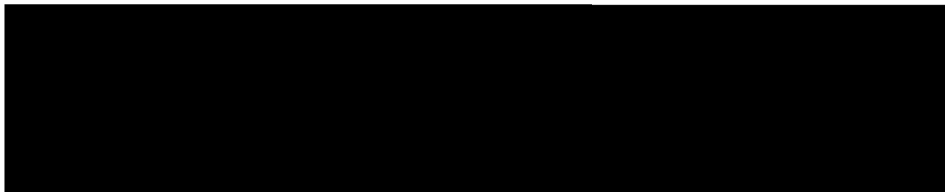
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Q. And your understanding was that Citi was going to eliminate the derivatives group as a group with a reporting structure to management?

A. I actually believe that's actually happened, so there used to be a US head of derivatives, et cetera, and the people, the employees, were still there. They just didn't report to a derivative head. They reported to a sales head, trading, so the management structure, the management structure was taken away, but what you call the line employees were still there. They just had different reporting lines.

Q. You mentioned you had some concerns that the firm would survive. Can you elaborate more on that?

A. There was a government bailout, so if you look from the outside I believe there were bailouts of many companies on Wall Street. They could have not made it. Lehman wasn't bailed out and didn't survive, so there was a real concern whether the company or the system would survive.

Q. In your group, strategy group, was anyone tasked with monitoring Bernard L. Madoff

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1 Securities Investment, LLC?

2 A. No.

3 Q. During the time that you were at Citi
4 did anyone in your group ever prepare a report or
5 some other analysis of BLMIS?

6 A. No one at Citi ever asked anyone in
7 my group to look at it. I was asked by a customer.

8 Q. And who was that customer?

9 A. The customer was Harry Markopolos
10 from Rampart, so the answer was no one at Citi ever
11 said, I want you to take a look at this, What do you
12 think of this, et cetera. I said before that one of
13 my responsibilities was responding to customer
14 requests for analysis.

15 Q. And you mentioned Mr. Markopolos,
16 someone we'll talk about today. When did you first
17 meet Mr. Markopolos?

18 A. I don't know exactly when I met him.
19 The sales people were responsible for setting up the
20 meetings, and I would just go. I'm very good with
21 concepts, remembering what we spoke about, but not
22 names, dates, places; you know, this guy used to be
23 here, the parent company is this. It's not how I
24 look at the world, so I don't know exactly when I
25 first met him. I would say I knew him for a number

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1 of years, so I'm not sure exactly. It may be
2 starting sometime in the late nineties.

3 Q. Sometimes I try to think was it
4 pre9-11, post9-11.

5 A. You mean when I first met him?

6 Q. Yes.

7 A. I would say in the late nineties.

8 MS. REISBAUM: Can we take a quick
9 break?

10 MR. FARLEY: Sure.

11 (Recess taken.)

12 Q. We were talking about Mr. Markopolos.
13 You mentioned he was a customer. What was the name
14 of his firm that he was associated with?

15 A. We referred it to Rampart. I don't
16 know the full name of the firm.

17 Q. What did you understand that Rampart
18 to be?

19 A. They're based in Boston. They manage
20 funds, and the part I knew was the quantitative part
21 of the fund that used options.

22 Q. And what were the circumstances that
23 you first met Mr. Markopolos?

24 A. I would frequently go to different
25 cities in the country and meet customers on trips

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1 that were scheduled by the salespeople, so it was
2 either in his office on one of those trips or in my
3 office when he came to see the salesperson, and then
4 the salesperson would be the person who set up those
5 meetings.

6 Q. Do you recall what salesperson at
7 Citi introduced you to Mr. Markopolos?

8 A. I know Holly Robinson covered Harry.
9 I don't know -- I know -- Tony Miles may have
10 covered Harry before him, but I'm not sure.

11 Q. What do you mean by "cover" Mr.
12 Markopolos?

13 A. The salesperson responsible for
14 managing the relationship between Citi and that
15 customer. Every salesperson has a list of customers
16 they cover, and every customer in the firm is
17 covered by one salesperson primarily. Another
18 person may be a backup, so there's a designation
19 inside the firm who's responsible for a certain
20 account.

21 Q. What did you understand
22 Mr. Markopolos to be doing at Rampart?

23 A. He was doing some strategies
24 involving options, and the reason I knew is we
25 basically discussed some data. We were helping

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1 provide data for him to do certain analysis.

2 Q. What type of data did you provide?

3 A. The data we provided to customers
4 primarily had to do with option pricing, option
5 volatilities, et cetera.

6 Q. What types of options?

7 A. Equity options, both listed -- listed
8 options, both on indices and individual names.

9 Q. Did you provide him with any data on
10 the S&P 100 Index options?

11 A. I don't know. Probably not.

12 Q. And did you form any impressions of
13 Mr. Markopolos when you first met him?

14 MS. REISBAUM: When you first met?

15 MR. FARLEY: Yes.

16 A. No.

17 Q. How would you describe the nature of
18 your relationship with Mr. Markopolos over time?

19 A. I would say no different than any
20 other customer I spoke to.

21 Q. And approximately --

22 A. Does that answer your question?

23 Q. We'll talk about it. Your answer is
24 your answer. Approximately how many times did you
25 meet Mr. Markopolos over the span of your tenure at

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1 Citigroup?

2 A. Five or six.

3 Q. And did you have regular or frequent
4 communications with Mr. Markopolos?

5 A. No. I would -- I wouldn't -- didn't
6 have his phone number. It's not as if I had a -- a
7 -- a schedule of calling him, so if he had called to
8 speak to me, he would probably go through the
9 salesperson. So if -- you know, if he called, I
10 would pick up the phone, but I would say, you know,
11 through business -- me traveling to Boston and him
12 coming, I may have seen him, as I said, maybe once
13 every year or two.

14 Q. And did you communicate with him by
15 email?

16 MS. REISBAUM: You mean ever or
17 regularly?

18 Q. Ever.

19 A. I don't know if I sent him an email.
20 I assume if he was asking for data, I assume
21 somebody from my group would have sent him an email
22 with data in it.

23 Q. But he was not somebody you were
24 regularly exchanging emails with, from what I
25 understand you are saying.

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1 A. No.

2 Q. Did there come a time when
3 Mr. Markopolos and you discussed Bernard Madoff or
4 BLMIS?

5 A. By that, you mean the broker/dealer.

6 Q. Yes.

7 A. Yes.

8 Q. And what were the circumstances
9 pursuant to which you had this conversation about
10 Madoff?

11 A. He was in the office. He had come,
12 you know, through the salesperson, and he was asking
13 questions about -- about Madoff.

14 Q. You said he came through the
15 salesperson. Do you recall who that salesperson
16 was?

17 A. That's Holly.

18 Q. And did he have a meeting scheduled
19 with you that he came to New York for?

20 A. I don't know. He wasn't in a
21 conference room. So it wasn't as if we, you know,
22 we had a -- a -- an agenda or a conference room, so
23 I guess I knew he was coming, but I'm not sure it
24 was on the calendar.

25 Q. And who participated in this meeting

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1 with Mr. Markopolos and yourself?

2 A. Like I said, it wasn't a formal
3 meeting, because it was on the trading floor. It
4 was more like a conversation, not like this setting
5 here. So I would say it was just Harry and myself,
6 although it was on a trading floor.

7 Q. But there were no other people who
8 were formally involved in your discussion.

9 MS. REISBAUM: Objection.

10 Q. Was it basically a conversation
11 between you and Mr. Markopolos?

12 A. Yes, it was, but not in a private
13 place.

14 Q. And did you -- and what did he say
15 and what did you say to him?

16 A. I don't remember the exact words.

17 Q. What do you recall?

18 A. I looked at a web site, which I
19 assume he directed me to, that was probably the
20 broker/dealer web site that had a strategy
21 description of something involving options, so I
22 remember looking at that. And also I remember him
23 showing me or directing me to information about the
24 returns of such a strategy, so the -- The discussion
25 was, how is it possible to get these returns with

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1 this type of strategy. That was the one part of the
2 discussion.

3 The other part of the discussion was
4 whether people at Citi were familiar with Madoff
5 trading in the markets that we're aware of. Those
6 were the two parts of the conversation.

7 Q. And with respect to the first part of
8 the conversation dealing with returns generated by
9 the strategy, what, if anything, did you say to
10 Mr. Markopolos about that subject?

11 A. I don't remember the exact words.

12 Q. What do you recall in general?

13 A. I'm sorry. Are you asking what I --
14 what I said to him or -- or -- or what I thought --
15 I'm not sure exactly what you're asking.

16 Q. I'm just trying to get your best
17 recollection of that conversation. That's all.

18 A. Just the conversation.

19 Q. The conversation that you and
20 Mr. Markopolos had. We can then talk about other
21 impressions you have, but I'm just trying to
22 understand --

23 A. I remember clearing my thoughts at
24 the time. I'm not sure exactly what I said. I can
25 tell you what I was thinking at the time.

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1 Q. That's fine.

2 A. I thought -- well, I first tried to
3 find out how that -- how it's possible to reconcile
4 what I saw, a discrepancy between the strategy and
5 the returns, and I tried different possibilities,
6 maybe it's this, maybe it's this, maybe it's that.

7 Q. What was the discrepancy that you
8 thought existed?

9 A. The -- The strategy is -- involves a
10 -- what -- it says split strike conversion or
11 reversal. I would call it a collar strategy to be
12 simpler, of owning stocks and owning a collar. So
13 if the collar is a wide collar, then it would have a
14 return series that looked very similar to the S&P.
15 And if it was a narrow collar, it would have a
16 return series that would look very similar to owning
17 short dated bonds or T bills. Okay?

18 And depending on how wide or narrow
19 it is, it would vary between being one of those or
20 the other, or a hybrid of those. And the thing is
21 it didn't look like any of those. It didn't look
22 like owning Treasuries, it didn't look like owning
23 S&P, it didn't look like any mixture of those
24 things. So that was the discrepancy.

25 The one possibility I thought was

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1 that the person was buying stocks and shorting the
2 index, then the stocks must be outperforming the
3 index on a regular basis, but there was no -- if
4 that's what the person was doing, then there's
5 really no need to use the options. One could use
6 futures and there was no discussion of how that
7 stock selection actually happened.

8 So I also thought that maybe the
9 person was using index options and individual
10 options for the different strikes because there's a
11 strategy that involves buying individual options and
12 selling index options. I thought the person was
13 doing that sort of strategy, but that wasn't it
14 either. So basically, I tried, you know, 4 or 5
15 different possibilities of saying it could be this,
16 it could be this, it could be this, it could be
17 this. And I came to the conclusion that none of
18 those really made any sense.

19 Q. And how did you go about trying to
20 resolve these discrepancies? And I'm asking what
21 did you do? Was it something you went back and did
22 some mathematical equations? Did you just think
23 about it? I'm just trying to understand that
24 process.

25 A. I mean, it's something I could

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1 certainly do without -- without pencil and paper and
2 without a spreadsheet. It's more a conceptual issue
3 than a question of details.

4 Q. And are you able to do this analysis
5 because of your background in derivatives and
6 options trading?

7 MS. REISBAUM: Objection.

8 Q. What is it that enabled you to be
9 able to look at the strategy and view a discrepancy
10 and attempt to resolve that?

11 MS. REISBAUM: Objection.

12 Q. You can answer.

13 A. My understanding of the return
14 profiles of different types of strategies involving
15 equities and options.

16 Q. And did you communicate your thoughts
17 about the returns generated by the strategy to
18 Mr. Markopolos?

19 A. The -- my conclusion is that the
20 returns weren't generated by the strategy, they were
21 either generated by something else -- that something
22 was amiss there.

23 Q. Did you tell Mr. Markopolos that?

24 A. Probably, yes.

25 Q. Do you recall telling him that day or

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1 sometime thereafter?

2 A. If I told him, it was that day.

3 Q. Again, I'm not trying to be precise
4 here, but approximately how long was this
5 conversation that you had with Mr. Markopolos
6 regarding Madoff?

7 MS. REISBAUM: Objection.

8 Q. That particular day, we're talking
9 about the time that he --

10 A. I would say from the time that he
11 showed it to me, right, that probably was a -- maybe
12 a five-minute conversation discussing it. And then
13 I probably spent between 15 minutes to a half hour,
14 looking at the strategy, et cetera, trying to figure
15 it out and then probably a few minutes afterwards,
16 you know -- he also, as I said before, he asked
17 about the activity in the market, so the asking
18 about that and that probably took maybe a half-hour
19 and probably the -- the conclusion, I guess, if you
20 want to call it that, would probably be a few
21 minutes.

22 Q. Did he bring any paperwork with him
23 and give to you --

24 A. I don't know.

25 Q. -- at this initial meeting?

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1 A. I don't remember.

2 Q. You mentioned you looked at a web
3 site.

4 A. Yes.

5 Q. Did he give you any monthly account
6 statements or brokerage account statements to
7 review?

8 MS. REISBAUM: Objection.

9 Q. You can answer.

10 A. No.

11 Q. Just trying to find out what was
12 exchanged and what wasn't. We'll talk more about
13 the split strike conversion strategy during the day,
14 but let's talk about your second portion of your
15 conversation with Mr. Markopolos, which I understand
16 you to say involved whether there was Madoff
17 activity in the market, so to speak. Is that
18 correct?

19 MS. REISBAUM: Objection.

20 Q. I'm just trying to understand what
21 you said.

22 A. Whether -- whether -- whether people
23 were familiar with him trading in the market.

24 Q. And what did you say to him in that
25 regard?

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1 A. When he asked the question, or when I
2 got the answer?

3 Q. Both.

4 A. I don't remember exactly. I remember
5 not knowing the answer and asking other people. And
6 then as I usually do, you know, someone asks me a
7 question, I find out the answer and report the
8 answer to the person who asked the question.

9 Q. And who did you consult on the
10 question of Madoff market activity?

11 MS. REISBAUM: Objection.

12 Q. You can answer.

13 A. I would say it wasn't really a
14 consultation. It was the type of thing where if I
15 wanted an answer from a certain group, I would say,
16 hey, index traders, you know, what's the price of
17 this. And someone would shout back, as opposed to a
18 meeting. It was more that type of informal
19 conversation.

20 So I remember going over to the
21 people on the index desk and asking, has anyone
22 heard or seen this. And the answer was no. And I
23 remember asking salespeople, has anyone heard or
24 seen this, and the answer was no, but it -- I guess
25 you can call it a conversation, but it's something

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1 that lasted a minute.

2 Q. Just so the record is clear, I have
3 to ask you, what do you mean by the index desk?

4 A. Oh, we had different trading desks at
5 Citigroup that traded different products. There was
6 one that traded exotic options and structured
7 products, one that traded index options, one that
8 traded individual options, one that traded swaps.
9 So depending on which product you trade, you go to a
10 different group of traders.

11 Q. When you went to the index desk, what
12 did you did ask them?

13 A. Something -- I don't know the words
14 exactly.

15 Q. I'm asking -- you said, has anyone
16 seen this and they said no. I'm trying to
17 understand what the this and the no is?

18 A. Has anyone, you know, seen someone
19 named Madoff trade in the index options, has anyone
20 heard about someone, you know, named Madoff trading
21 in the index options.

22 Q. And what was the response to it?

23 A. The answer was no, they hadn't. When
24 I ask a question like that, the answer could be --
25 the type of answers that may refer to another type

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1 of activity, not this one, may be, yes, we trade
2 with him, no, we don't, or no, we don't trade with
3 this person, but we're aware of the activity because
4 of XYZ. So are the type of answers I would expect.

5 Q. And their response was --

6 A. No, we don't trade with him, no, we
7 haven't seen any -- we haven't heard or seen
8 anything about this.

9 Q. Just to be clear, you were
10 essentially asking him, are you aware of any S&P 100
11 Index options trading.

12 A. No.

13 Q. What were you asking him? I'm sorry.
14 Again, I asked you to be patient with me at the
15 beginning.

16 A. The question is, do you know of a --
17 of a counterparty named Bernie Madoff or Madoff
18 trading this product.

19 Q. What's the product?

20 A. OEX options or any other index
21 product.

22 Q. Was your question limited to exchange
23 traded or both over the counter and exchange traded?

24 A. It was a general question.

25 Q. Other than consulting Citi's index

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1 desk, was there any other department or person that
2 you questioned --

3 A. The salespeople.

4 MS. REISBAUM: Objection.

5 Q. And who did you further question
6 about Madoff market activity?

7 A. I would say I don't know, because I
8 asked it more to a group of people in a certain area
9 as opposed to anyone specific.

10 Q. And to what group did you ask that
11 question?

12 A. Salespeople. Equity derivative
13 salespeople.

14 Q. Do you recall any of the people who
15 were in that group --

16 A. I can tell you the salespeople who
17 worked at Citigroup over the past ten years. I
18 would have to sit down with each one and find out
19 when they came and when they left in order to find
20 out -- the answer is I don't recall at the time.

21 Q. I'm just trying to get a sense is
22 there anyone sticking out in your mind that said or
23 communicated back to you in response to that
24 question, the answer --

25 A. The answer is no, because it was

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1 common that if I needed information, it was
2 important that someone on the desk -- the same thing
3 happened when someone asked research for a question.
4 They would say, hey, research, you know, what's
5 this, and we'd answer. And that was sufficient,
6 they didn't really care whether the answer came from
7 me or somebody else. I mean, that's the way things
8 work on a trading floor, you think in terms of
9 groups of people.

10 Q. So to the best of your recollection,
11 give us the general sense of what did you ask of the
12 salespeople in regard to Madoff trading activity?

13 A. Do you know him -- do you know -- do
14 you know this person as a customer, someone who's
15 active in the market.

16 Q. And what was their response?

17 A. The answer was no.

18 Q. Other than the index desk and the
19 salespeople, do you recall having any other
20 communications or questions to any people in your
21 quest to find the answer back for Mr. Markopolos?

22 A. No. Those were the -- those were the
23 people within shouting distance of me. I didn't
24 speak to anyone else. I didn't leave my general
25 area.

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1 Q. Did you communicate back to
2 Mr. Markopolos what you learned with respect to your
3 inquiries about the Madoff market activity?

4 A. Yes.

5 Q. And what did you do in that regard?

6 MS. REISBAUM: Objection.

7 Q. Did you pick up the phone and call
8 him, email him --

9 A. No. He was at the time -- this whole
10 thing happened -- I said he was there, he asked some
11 questions. I did some, what I thought was work on
12 behalf of the request, and then I answered the
13 customer.

14 Q. Was Ms. Robinson present for any of
15 this discussion?

16 MS. REISBAUM: Objection.

17 Q. I'm just speaking again about
18 Mr. Markopolos being in New York that particular --

19 A. She would have let him in the
20 building and seen him in and seen him out. So yes,
21 she was present in terms of, you know, here's Harry,
22 here he is.

23 In terms of content, no. There's
24 some times when we're sitting in a conference with a
25 salesperson and the salesperson is making notes and

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1 as part of meeting, we have follow up, et cetera,
2 and that's a more formal type of meeting. The other
3 thing was customers may speak to different people on
4 the floor and have different conversations with
5 nobody, you know, supervising or quarterbacking the
6 meeting, you know, the more informal type of thing.

7 Q. Prior to Mr. Markopolos coming to New
8 York that day, did you know that you would be
9 discussing Madoff with him?

10 A. No. I'm not even sure I knew he was
11 coming.

12 Q. Before you had this conversation with
13 Mr. Markopolos that day, had you ever heard of
14 Bernard Madoff or his investment --

15 A. I heard the name, but hadn't really
16 associated -- There's a difference of hearing the
17 name, right, and then knowing something about it and
18 knowing -- I would say it was a name I may have
19 heard or seen without being able to attribute any
20 meaning to it.

21 Q. It had no particular significance to
22 you.

23 A. No.

24 Q. I accept the fact that you say you're
25 not great with dates, but can you try to give us a

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1 sense of when this meeting took place?

2 A. It was before I left.

3 Q. That much is clear.

4 A. It was after we moved from 7 World
5 Trade Center, so it was after the merger with
6 Travelers. After '98.

7 Q. There's no riddle here.
8 Mr. Markopolos has publicly said he met with you in
9 2005. Do you have any reason to believe that that
10 would be incorrect?

11 A. I mean, I don't have my own calendar
12 and I don't have the ability to look at a calendar.
13 If I had that, I could say whether that agreed with
14 my notes or not. But the answer is I don't have my
15 own -- no. I don't know whether that's correct or
16 not correct.

17 Q. You mentioned notes. Do you recall
18 making any notes of your meeting with Mr. Markopolos
19 about Madoff?

20 MS. REISBAUM: Objection.

21 Q. You can answer.

22 A. I wasn't in the habit of keeping a
23 notebook or notes.

24 Q. I don't either.

25 A. If -- There are many times where I

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1 would do something and scribble something and throw
2 it out. I didn't -- It's not as if, you know, if I
3 had customer meetings, the salespeople usually take
4 notes and I would be talking.

5 Q. You didn't have a practice of keeping
6 a log --

7 A. I didn't have a log. Didn't have a
8 notebook. I -- I would rely on, you know, the
9 salespeople to manage those type of things. So the
10 answer is I definitely don't have any notes from the
11 meeting or there would be nothing at the end of the
12 day that I would be able to look and see anything
13 that says Markopolos or Harry.

14 Did I scribble on a piece of paper?
15 I don't know. Did I open a spreadsheet and not save
16 it, maybe I did that, but there's nothing -- there's
17 nothing anyone could find that I could say, hey,
18 this is a note responding to that. Did I scribble
19 something or open a spreadsheet? I may have. That
20 was the standard thing I may have done, but there's
21 no recollection I have that says it's in this
22 notebook or this file.

23 Q. Did Mr. Markopolos give you any
24 indication as to why he was asking you these
25 questions?

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1 A. I don't remember.

2 Q. Do you recall asking him why you need
3 this information or having any discussion about the
4 context of why you were providing this information
5 to him?

6 MS. REISBAUM: Objection.

7 A. Could you repeat the question? I was
8 looking out the window.

9 Q. I'm trying to understand, was there
10 any discussion or context to this inquiry --

11 A. I would say if there was any context,
12 it was a question that -- that he was -- I guess he
13 was skeptical, would be the general context, that he
14 had some skepticism, or to him it was a puzzle or
15 something that needed to be figured out.

16 Q. And did you agree with his skepticism
17 after performing your own analysis?

18 MS. REISBAUM: Objection.

19 Q. You can answer.

20 A. I'm not sure whether the skepticism
21 he had, you know, whether he indicated he was
22 skeptical and said I'm skeptical, do you agree or
23 whether his skepticism was after I looked at the
24 ting. I'm not sure whether he coached me or not to
25 getting a conclusion or whether he was simply

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1 saying, look at this. So repeat the question,
2 please?

3 Q. If I understand correctly, you agreed
4 that the strategy that you looked at was not capable
5 of generating the returns that were being stated.

6 MS. REISBAUM: Objection.

7 Q. You can answer.

8 A. The strategy as described.

9 Q. Yes.

10 A. It's possible it was
11 mischaracterized, that there was something else
12 going on. The strategy as described, as I
13 understood it, so yes, I was skeptical that that
14 strategy as described could generate those returns.

15 Q. And we'll talk about this today at
16 some length and, again, I ask you to bear with me
17 because you'll feel like sometimes we're repeating
18 ourselves?

19 A. Yes. That's why I'm confused.

20 Q. Don't mean to confuse you at all.
21 Can you try to tell us, to the best of your ability,
22 why you were skeptical that the strategy as
23 described was not capable of generating these
24 returns?

25 MS. REISBAUM: Objection.

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1 Q. You can answer.

2 A. Like I said before, that portfolio of
3 equities with a collar around it behaves either like
4 the equity market in the limine case, where the
5 collar is very wide, which means the strikes are
6 very far apart, or it behaves like a fixed-income
7 instrument, where the strikes are very close.

8 So in a limine case, where the
9 strikes are equivalent, you get the fixed-income
10 returns which would give you a short-term rate which
11 in the U.S. vary between one and five or six
12 percent, so that would give you between one and five
13 percent and the numbers that I remember were more in
14 the area of -- as an annual rate. Per year, not per
15 month.

16 Q. Per year. Not per month.

17 A. Yes. So the numbers I remember were
18 more in the area of ten percent so -- and the thing
19 is if someone had -- and the other limiting case
20 that the collar was very wide, you would have
21 something that looked very much like the equity
22 market, where the equity market, of course, had some
23 years where it was up ten percent, but it also had
24 years where it was down a lot. So the return series
25 of someone who had the equity market without a hedge

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1 would have months that were one or two percent and
2 months that were down a lot.

3 So it looked neither like pure fixed
4 income or pure equities. And if you had a hybrid,
5 if you did something that had strikes that were far
6 apart to give you let's say half the risk of the
7 equity market, just conceptually, it would look like
8 something that was half short-term bonds and half
9 equity market, so it would look as an average
10 between these two extremes. It didn't look like
11 that either.

12 So in terms either of its risk and
13 reward, it didn't look like what we call linear
14 combination, which means a weighted average of any
15 of these two limiting cases, one pure fixed income
16 and one that's pure equity, so -- so if -- if that
17 was where the return was coming from, that didn't
18 make sense to me.

19 The other possibility I thought was
20 that there was -- if someone were to pick stocks
21 very well and short the S&P against it, somebody
22 could get a return series that looked like this.
23 It's possible. But then I would assume someone
24 would focus more time on how it is they were able to
25 pick these stocks. That would be what was the

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1 important part of the strategy, not which options
2 they were doing -- in fact, someone doing that could
3 do the same thing with futures as opposed to
4 options.

5 So there was a long description of
6 the options that from my point of view weren't doing
7 anything useful. They weren't generating any
8 return, they were actually hedging something. And
9 if the person was very good at picking stocks, there
10 would be some discussion of how the person picked
11 stocks so well. So I couldn't see how that worked
12 either.

13 Q. You may have already -- I'm not
14 meaning to cut you off.

15 A. Some of the different possibilities I
16 thought of, right? So if the person was very good
17 at picking stocks, I would expect to see more about
18 that. If there was a question of finding value in
19 the options market opposed to always doing the same
20 options, if someone said, well, for instance, as an
21 example, whenever the volatility is like this, I
22 would do only the call, but other times I would do
23 only the put, or if they would look at the prices of
24 the options or look at the volatility of the options
25 to decide what to do, you can outperform that way as

1 well.

2 In fact, that's what my group was
3 good at making recommendations about. So if there
4 was some dynamic strategy that involved using
5 quantitative signals about the market, the returns,
6 et cetera, then I could see how that could work as
7 well, but I didn't see anything dynamic like that.

8 And also that would also involve a
9 fair amount of risk because many quantitative
10 strategies work most of the time. But when they
11 don't, you see a very negative performance. So it
12 wasn't consistent with a variety of things I knew
13 about in terms of, you know, it's a long short fund.
14 It's a volatility fund and the various categories I
15 knew about didn't really -- none of those really fit
16 the returns here.

17 Q. Well, maybe you answered this, but
18 what did the return profile look like to you?

19 A. The return profile had very many, I
20 would say, a vast majority of months that were
21 positive and very few that were negative. I do need
22 to say I have looked at information regarding this
23 after the case, so it -- it's not entirely clear to
24 me when I'm talking about something whether it's
25 something that I remembered at the time or something

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1 since then.

2 Q. I appreciate that.

3 MR. BOCCUZZI: So we should restate
4 the question, then, or just reask it, or have the
5 court reporter read it.

6 Q. If you recall -- and I appreciate
7 that sometimes it is difficult after the fact you
8 learn things, but I'm trying to put your mind back
9 --

10 A. I recall that looking at the number
11 of down months as one indicator, that looked like
12 the return profile that's more characteristics of
13 something else.

14 Q. Of what?

15 A. Well, there are many things that
16 could result in something like that. If someone was
17 only doing an agency business, a market making
18 business, without taking much risk and making all
19 the commissions, that would be the type of thing you
20 would see. If someone had a diversified hedge fund
21 or a fund of funds, were doing many different
22 strategies, where each one of them had its variation
23 but when you add them all up, they cancel out or
24 something, right, then you could get something like
25 that.

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1 If someone were doing a different
2 type of business, right, was selling computer
3 software or something, right, someone was running a
4 casino, there are things more suitable to the type
5 of business that makes money every month, so -- so I
6 thought it would be suitable to something like that.

7 So there are -- and there are hedge
8 funds who have track records of doing very well for
9 very long times, and also firms that do very well
10 for very long times, but they're basically doing a
11 variety of strategies, right, and they're choosing
12 which ones to do, and allocating back and forth.
13 And there's some -- you know, a bunch of strategies
14 and a portfolio of strategies that when you put
15 everything together, you can get a return series
16 like this. But if you look at any individual one,
17 it would not look as good, meaning you would have
18 the same return, but much more risk.

19 Q. Did you understand that Madoff was
20 running a single strategy when you were --

21 A. I only saw one strategy described on
22 the web site. I also thought that, you know, maybe
23 the returns are coming from the market making
24 activities, right? Then that -- because when I
25 looked at the web site, I saw it was a market maker.

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1 So if someone was only doing market
2 making, I can see how you make money every single
3 month, because the way you lose money market making
4 is, you know, basically you have an error or you --
5 you know, something just goes wrong, but if you're
6 always making markets without much risk in it in
7 something that's liquid, it's possible to make money
8 on a regular basis.

9 Q. Did Mr. Markopolos explain Madoff's
10 business to you or what you were looking at in terms
11 of investment advisory accounts?

12 A. No. I did not understand what the
13 entity was. I -- I assumed it wasn't a hedge fund
14 because hedge funds don't advertise, and I saw
15 something about a broker/dealer, so I assumed I was
16 looking at something that was a broker/dealer.

17 Q. After your conversation with
18 Mr. Markopolos that day in which you discussed
19 returns and the market activity, did you speak with
20 anyone else at Citi who we haven't discussed today
21 outside of the sales desk people and the index desk
22 about your conversation with Mr. Markopolos?

23 MS. REISBAUM: Objection. Can you
24 restate that question? I lost track.

25 MR. FARLEY: It was a bad question.

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1 Q. I'm trying to find out, Mr. Gross,
2 we've talked about you speaking or having a
3 conversation with the index desk, with the
4 salespeople. I'm trying --

5 A. That was --

6 MS. REISBAUM: Hold on, let him get
7 the question out.

8 Q. I know what you're going to say,
9 they're not meetings, I understand you just had a
10 quick question to them, they gave you a quick
11 answer. I'm trying to find out after that, did you
12 speak to anyone else at Citi about Madoff in the
13 time frame when you were about --

14 A. No.

15 Q. -- this conversation with
16 Mr. Markopolos?

17 A. No.

18 MR. FARLEY: Let's take two minutes.

19 (Recess taken.)

20 (Exhibits Gross-1 and Gross-2 marked
21 for identification.)

22 Q. As a housekeeping matter here, let's
23 go ahead and mark as Gross Exhibit 1 the protective
24 order signed by Mr. Gross and Gross Exhibit 2, the
25 protective order signed by Ms. Reisbaum. And also

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1 for the record, the court reporter has executed a
2 protective order as well and the Cleary law firm has
3 already executed a protective order as well.

4 Going back to the conversation that
5 you had with Mr. Markopolos that day regarding
6 Madoff, did he ask you to do any further work upon
7 his departure?

8 A. No.

9 Q. What was the next circumstance or
10 time you recall meeting with Mr. Markopolos?

11 A. Yes, I recall two meetings at Citi
12 afterwards. I don't know if there was one in
13 between so the answer is the next one I can't tell
14 you. I can tell you there were further ones.

15 Q. Again, all we can ask for is your
16 best recollection involving an interaction with
17 Mr. Markopolos?

18 A. The next one in person was he came to
19 the office and we met in a conference room and he
20 showed me a business card and said he had a new job
21 and the question was a personal thing, what's new
22 with you, and also he told me about his new job.

23 Q. And what was his new job?

24 A. He's some kind of financial fraud
25 investigator.

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1 Q. Were you and Mr. Markopolos the only
2 people present in the conference room?

3 A. I don't know.

4 Q. And you mentioned that you recall
5 this being the next in-person meeting. Did you have
6 any other communication with him before that
7 in-person meeting?

8 A. I don't know.

9 Q. Did the subject of Madoff come up
10 during this meeting that you recall in the
11 conference room?

12 A. I don't remember, but it wasn't the
13 primary topic of conversation. I don't know whether
14 he mentioned it or not, but it wasn't what the
15 conversation was about.

16 Q. Was the conversation more focused on
17 his new job?

18 A. It was -- Yes. On his new job.

19 Q. Just to the best of your
20 recollection, do you recall discussing anything
21 having to do with Madoff during that meeting?

22 A. No. I don't.

23 Q. And you said you recalled another --

24 A. That's correct.

25 Q. -- meeting with Mr. Markopolos. When

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1 was that and what do you recall?

2 A. It was sometime in the Fall of 2008.
3 It was in the cafeteria.

4 Q. What cafeteria?

5 A. There's a -- the buildings at 390
6 Greenwich and 388 Greenwich, they're connected and
7 there's a cafeteria of -- I don't know the name of
8 the building, in Tribeca, in the cafeteria there on
9 the first floor.

10 Q. And what were the circumstances of
11 you meeting with Mr. --

12 A. Holly told me Harry was there, and
13 you know, we would have lunch and Holly was there
14 for, I would say, the first 20 minutes. And then I
15 joined and then after 15 minutes, Holly left and she
16 had to go back to the trading floor and we had some
17 breakfast together.

18 Q. And what do you recall discussing
19 during that meeting in 2008?

20 A. He was telling me more about his --
21 his -- his work that he was working on different,
22 you know -- he -- I believe the reason he was a --
23 he was meeting with us was, first of all, he was in
24 town and probably a social thing. But I think that
25 in order to do fraud investigations, he needed

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1 information. So he would talk to people he knows,
2 have you heard anything that would help him in the
3 job.

4 So I think part of the reason was, do
5 you know anything, have you heard anything. And
6 then he told me some of the things that he was, you
7 know, I'm working on something like this, et cetera,
8 so that was most of the content of the meeting.

9 Q. Do you recall any discussion
10 involving Madoff during this 2008 meeting with
11 Mr. Markopolos?

12 A. No.

13 Q. You don't recall or there was no
14 discussion --

15 MS. REISBAUM: Objection.

16 Q. I'm just trying to understand.

17 A. Your first question is, do you recall
18 and the answer is no, I don't.

19 Q. At any time before you left Citi's
20 employment in 2008, did you have any conversations
21 with others working at Citi about Mr. Markopolos's
22 suspicions regarding Madoff?

23 MS. REISBAUM: Objection.

24 Q. You can answer.

25 A. Apart from the time when Harry was in

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1 the office, no.

2 Q. Did you ever undertake to understand
3 or investigate whether Citi was involved in any
4 transactions involving Madoff or Madoff exposure?

5 MS. REISBAUM: Objection.

6 Q. You can answer.

7 A. I said I asked the salespeople and
8 the traders whether they knew of this customer
9 either indirectly or directly, so the answer is yes
10 that was my attempt to try to find out.

11 Q. Other than the inquiry you made that
12 particular day --

13 A. While I was working there, no.

14 Q. Apart from any conversations you had
15 with counsel, have you had any conversations with
16 anyone after you worked at Citi involving Madoff?

17 MS. REISBAUM: Objection.

18 A. Can you be more specific?

19 Q. Well, I'm trying to understand
20 because you answered the question while I was
21 working there, no. I'm trying to understand, are
22 you making a distinction between while you worked at
23 Citi and after you left Citi that you might have had
24 discussions involving Madoff?

25 MS. REISBAUM: Objection.

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1 MR. FARLEY: I'm not entirely sure
2 what the objections here are for. This is a 2004
3 deposition. There's really no objections to be
4 made.

5 MS. REISBAUM: I think you misstated
6 his testimony.

7 Q. I'm certainly not trying to misstate
8 your testimony.

9 A. I've had discussion with counsel.

10 Q. I don't want to hear about that.

11 A. You don't care about that. It's a
12 topic in the news, so people talk about it. So are
13 you asking about, you know, whether there were any
14 topics that people talked about in the news or are
15 you asking whether there's anything that's related
16 to people who actually worked in the industry or
17 know about this.

18 Q. What I'm really trying to ask,
19 Mr. Gross, and I apologize if I'm not doing it well,
20 is your conversations with anyone working at Citi
21 while you worked there, or after you worked there
22 involving Madoff. Can you tell me about those?

23 A. Conversations with people working at
24 Citi, I haven't spoken to any Citi employees other
25 than counsel about Madoff since I left Citi.

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1 Q. That's all I'm trying to find out.

2 And just so we're clear, you
3 understand when I refer to Madoff, I'm referring to
4 Madoff or the broker/dealer.

5 A. The person or the business.

6 Q. Yes.

7 A. Or any related -- Yes. I understand.

8 MR. FARLEY: I'm going to mark as
9 Gross Exhibit 3, an email with Bates Number
10 CGMH00002769 which appears to be an email from
11 Mr. Markopolos to Mr. Gross dated Friday, June 29,
12 2007.

13 (Exhibit Gross-3 marked for
14 identification.)

15 Q. Mr. Gross, do you recognize what I've
16 handed you as Gross Exhibit 3?

17 A. I understand that you've handed me
18 something that's labeled.

19 Q. Is this an email that was sent to
20 you, Mr. Gross?

21 A. Yes.

22 Q. Do you recall receiving this email
23 from Mr. Markopolos?

24 A. No.

25 Q. Do you have any reason to believe

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1 that you didn't receive this email?

2 A. No.

3 Q. Do you recall whether you responded
4 to this email, whether by reply email or telephone
5 or otherwise?

6 A. I didn't respond to this email.

7 Q. What, if anything, did you do with
8 this email, Mr. Gross?

9 A. Like I said, I don't remember opening
10 it or reading it.

11 Q. Sitting here today, do you have any
12 recollection of Mr. Markopolos suggesting that
13 Madoff was running a Ponzi scheme?

14 A. I -- I've seen this email in his
15 book, and I've also seen it in other contexts, so I
16 -- I -- I've seen it since I left Citi, and since
17 the information came out, but I didn't see it at the
18 time. I don't know what you're asking.

19 Q. What I'm asking -- Again, I
20 appreciate things have happened since, but what I'm
21 trying to understand is at or about June or July of
22 2007, what do you recall --

23 A. I was not in communication with Harry
24 in June of 2007. If he had suspicions when I met
25 him before in the office, then that's when I -- you

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1 know, I don't know exactly what he was suspicious
2 of, but I -- I don't remember him saying anything
3 about Ponzi when I met him.

4 Q. If you read this particular email, it
5 says, "Leon, long time no hear, but I know you'll
6 love this. Wickford is offering an HSBC swap on
7 Bernie Madoff that provides 3 to 3.25 times exposure
8 to Bernie Madoff. How they're planning on hedging
9 this should be telling. If they aren't getting full
10 visibility to Madoff's positions, then I'm very
11 suspicious. If HSBC is running blind factor model
12 to predict Madoff's return stream and then
13 replicating it, I'm even more suspicious. If Madoff
14 is allowing a third party marketer to pitch this
15 sort of product, my guess is that he is running low
16 on new investors, cash in flows and needs to feed
17 the Ponzi beast or face ruin. Any input on your
18 part of what you might be hearing. Is Madoff
19 running short of new cash? We all know how Ponzi
20 schemes turn out."

21 Do you recall receiving this email
22 and doing anything including responding to
23 Mr. Markopolos with any insights you had?

24 MS. REISBAUM: Objection. Asked and
25 answered.

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1 Q. You can answer.

2 A. I didn't -- I didn't -- I didn't
3 respond to the email, and I don't remember reading
4 this or opening it. I can tell you why I think that
5 is.

6 We -- We got hundreds of emails a day
7 and it was such that our emails were getting
8 unmanageable. We had all kinds of rules to put
9 things in folders and if the email got too big, you
10 couldn't send email. So they would call people up
11 and tell them to delete email. And I had all kinds
12 of rules to send things to folders. And the default
13 assumption is someone wouldn't read the email. And
14 it was a probabilistic thing whether someone
15 actually read your email or not. So we would send
16 it multiple times, send it to 3 or 4 people. We
17 would call people and say, read your email or we
18 would put it on a chat room.

19 So the assumption was anything on a
20 trading desk that only a small probability that
21 somebody would actually read and respond to any
22 email. And if someone really wanted to get
23 someone's attention, a single email would not
24 suffice. That was the kind of a standard practice
25 in working on the trading floor.

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1 It's also I see here, it's not during
2 business hours. It's a -- it's on a weekend and at
3 night, so it's entirely possible when the email came
4 in and I wasn't working or at my desk, so it's not
5 something I would have seen when it came in, so it's
6 entirely possible that I never saw the email or even
7 saw the header.

8 Q. Do you -- Is it your testimony then
9 you didn't forward this email to anyone?

10 MS. REISBAUM: Objection.

11 Q. To the best of your knowledge?

12 A. I didn't forward this email to
13 anybody.

14 Q. You have a recollection of that?

15 A. I have no recollection of that.

16 MS. REISBAUM: Objection.

17 Q. Other than your initial conversation
18 with Mr. Markopolos when you looked at the strategy
19 as described, tried to resolve the discrepancies, at
20 any other time, did you devote any time thinking
21 about Madoff and his trading strategy and the
22 returns he generated?

23 MS. REISBAUM: Objection.

24 Q. You can answer.

25 A. That was the only time the -- the

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1 name Madoff ever came up.

2 Q. Came up with Mr. Markopolos or just

3 --

4 A. Came up in my -- came up in my -- in
5 my employ at Citi.

6 Q. You mentioned Mr. Markopolos's book.
7 Have you read it?

8 A. I own it. I've read parts of it and
9 skimmed it. I can't tell you I read every page.
10 I'm familiar with parts of it.

11 Q. Were you aware while you worked at
12 Citi that certain financial institutions were
13 offering leveraged exposure through total-return
14 swaps or structured products to Madoff feeder funds?

15 A. No.

16 Q. Do you know what Wickford Fund LP is?

17 A. No. I can guess, but I don't know.
18 I'm not familiar with Wickford.

19 Q. Other than the email that I put in
20 front of you from Mr. Markopolos dated June 29,
21 2007, do you have any recollection of receiving any
22 email from Mr. Markopolos while you worked at Citi?

23 A. I don't remember any specific email.
24 It's entirely possible in our conversations about
25 requesting data that either me or someone in my

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1 group forwarded him some data or something, but I
2 don't remember ever actually writing him an email.

3 Q. And I think you answered this, but
4 just to be clear, did you ever follow up with
5 Mr. Markopolos after your initial meeting with him
6 in New York discussing Madoff about any subject --

7 A. You mean did I take the initiative?

8 Q. Yes.

9 A. To call him?

10 MR. BOCCUZZI: About Madoff.

11 A. About Madoff.

12 Q. Madoff.

13 A. About Madoff, no.

14 Q. Are you still in contact with
15 Mr. Markopolos?

16 A. I don't have his phone number. I
17 sent him an email four or five months ago. I'm not
18 sure how to answer your question. If you ask more
19 specifically, I can help you.

20 Q. Do you still maintain a professional
21 or a social relationship with Mr. Markopolos?

22 MS. REISBAUM: Objection.

23 A. I would say it's not a relationship.
24 I can tell you the interactions since I left Citi.

25 Q. And what are they?

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1 A. In December, 2008 when the -- when
2 Harry was on the front page of the Wall Street
3 Journal, I made an effort to contact him. I didn't
4 know how to contact him. I emailed the Wall Street
5 Journal reporter and -- who wouldn't provide me
6 contact information. And I said if you talk to him,
7 tell him to contact me because he was protecting --
8 I guess he was protecting Harry because he was
9 getting lots of calls or something. And I remember
10 calling back and forth, it was around the holidays.
11 I remember playing phone tag. I don't know if I
12 ever spoke to him, but I do remember some voice mail
13 message, so that was one interaction.

14 Q. Why did you attempt to reach out to
15 him?

16 A. I -- you know, it's not every day
17 that someone I know is on the front page of Wall
18 Street Journal. There are times when people I heard
19 of, famous people I heard of, yes, I've heard of
20 this person or may have saw somebody once, but, you
21 know, when a relative or a friend or customer or
22 someone I actually know, right, is on the front page
23 of something, I am interested and I want to call
24 them up and say I saw that, or things like that, how
25 are you doing.

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1 Q. Was there any other information or
2 contact you had with Mr. Markopolos since?

3 A. The -- There was a time -- I don't
4 know exactly when -- where one of my relatives had
5 showed me something that I believed to be a fraud,
6 so I basically referred him to Harry and said maybe
7 Harry would be interested in helping him or finding
8 out about it.

9 Q. I assume that had nothing to do with
10 Madoff issues.

11 A. No. And when the book came out, I
12 wanted a copy of the book and it wasn't -- It wasn't
13 in the book stores yet, so I went to the book party
14 and got a copy of the book, of Harry's book.

15 Q. His book signing?

16 A. Yes. I guess it's -- it's called a
17 book party.

18 Q. And you mentioned when news broke
19 about the Madoff Ponzi scheme what, if any, reaction
20 did you have?

21 A. Well, I was very interested in
22 reading about it. I was -- I was surprised to see
23 my -- my name quoted in a thing -- something
24 involving the SEC. Someone forwarded it to me and
25 said take a look at this.

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1 Q. But not in a bad way.

2 A. I said I was surprised. So there was
3 certainly surprise on that. And I guess I thought
4 that a -- that -- that Harry had his suspicions and
5 he had turned out to be right. That was, I guess,
6 my thinking at the time. I'm sorry. Did that
7 answer your question?

8 Q. That's fine. Mr. Gross, in a -- one
9 of Mr. Markopolos's submissions to the SEC,
10 Mr. Markopolos states, "Leon can't believe that the
11 SEC hasn't shut down Bernie Madoff yet. He's also
12 amazed that FOFs" -- fund of funds -- "actually
13 believe the stupid option strategy is capable of
14 earning a positive return much less a 12 percent net
15 average annual return. He thinks the strategy would
16 have trouble earning 1 percent net, much less 12
17 percent net."

18 Do you recall having a discussion
19 with Mr. Markopolos where you expressed those
20 thoughts in words or substance?

21 A. Am I allowed to see that piece of
22 paper?

23 Q. Absolutely.

24 A. Now that I have this, could you ask
25 the question?

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1 Q. I just read you a portion of a
2 submission made by Mr. Markopolos to the SEC in
3 which he purports to attribute thoughts or ideas to
4 you. I'm asking you, hearing those, does that
5 refresh your recollection as to making these remarks
6 to Mr. Markopolos or not and what do you recall
7 about that?

8 A. There are a number of remarks. I
9 guess we should take them one by one as opposed to
10 asking a general question.

11 Q. Okay. Let's take it one by one. The
12 first thing Mr. Markopolos states is, "Leon can't
13 believe that the SEC hasn't shut down Bernie Madoff
14 yet." What, if anything, do you recall about that
15 statement, if it was made?

16 A. I don't recall making that statement.
17 I do recall thinking that there was something very
18 wrong with a broker/dealer, quote, unquote,
19 advertising or publishing a strategy that didn't
20 make sense to me. So I didn't know what was wrong
21 but I thought something was wrong. That was my
22 understanding at the time. I don't know if I said,
23 you know, should be shut down, SEC should have shut
24 it down, there should be consequences. I don't know
25 how much of that is his paraphrasing me or my own

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1 words, but I do remember saying something is wrong
2 here.

3 Q. Mr. Gross, was it that clear to you
4 in looking at the strategy as described that it
5 simply could not do the returns that it purported to
6 achieve?

7 MS. REISBAUM: Objection.

8 Q. You can answer.

9 A. At the beginning or at the end? When
10 he first showed it to me or after thinking about it
11 for an hour?

12 Q. After thinking about it?

13 A. After thinking about it, that was my
14 conclusion.

15 Q. And that was thinking about it for an
16 hour or so.

17 A. Probably was.

18 Q. We'll go line by line. Just to be
19 clear, Mr. Gross, I'm just asking you whether this
20 happened or not. I'm not suggesting you made every
21 one of these statements. This is as reported by
22 someone who is not here, but let's just talk about
23 this. He says, "he's also amazed that fund of funds
24 actually believed the stupid options strategy is
25 capable of earning a positive return, much less a 12

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1 percent net average net return."

2 Do you recall making the statement in
3 that regard, in those words or substance? And, if
4 so, what do you recall?

5 A. I wouldn't have used the FOF because
6 that's not something I'm familiar with, so if -- if
7 that's in there, then that's his understanding. My
8 understanding would not be to use that, so I'm not
9 sure whether that is something I actually said. I
10 did say before that I didn't think that this
11 strategy was capable of -- this strategy as
12 described was capable of returning -- of giving the
13 returns.

14 I believed at best, it could either
15 do something that looked like the risk-free rate or
16 something looked like market or something in
17 between. So I did believe that -- I did believe
18 that -- that there is a discrepancy, as I said
19 before, in the returns as described -- I'm sorry,
20 the strategy as described and the returns as
21 reported. And I thought that that discrepancy was
22 problematic.

23 Q. When you say a "risk-free rate" would
24 that also include an investment in Treasury bills?

25 A. The risk-free rate by definition is

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1 Treasury bills. The only question is which maturity
2 you buy.

3 You would have to be more specific.
4 Every country obviously has its own benchmark
5 currency, et cetera.

6 Q. I should have asked you this before.
7 What licenses do you currently hold or have you
8 held?

9 A. I don't know whether the licenses I
10 held before -- what happens to them when someone
11 actually leaves the firm.

12 Q. Fair enough.

13 A. Series 7, series 3, Series 63, series
14 24. Those are the ones I remember. There may have
15 been one or two other ones.

16 Q. What, if any, options licenses --

17 A. I'm not sure. I think the 63 is
18 options. I think 3 is futures. I may be wrong
19 about that, but whatever ones I needed to do my job,
20 I had. The series 24 is to be a manager. I had
21 that one as well to run a desk or to run a retail
22 branch.

23 Q. Did Mr. Markopolos ever ask you to
24 share any of the information he had learned about
25 Madoff with anyone at Citi other than yourself?

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1 A. No.

2 Q. Did Mr. Markopolos ever ask you not
3 to share any of the information you had discussed
4 with him about Madoff with others at Citi?

5 A. No.

6 Q. Did you ever think about whether you
7 should be sharing the information about Madoff that
8 had been brought to you by Mr. Markopolos with
9 anyone at Citi?

10 MS. REISBAUM: Objection.

11 A. I would say I didn't spend a lot of
12 time thinking about it.

13 Q. When you were having these
14 discussions or discussion with Mr. Markopolos about
15 Madoff, did you have any sense of how large an
16 operation Madoff had with respect to assets under
17 management?

18 A. I wasn't aware that he was managing
19 money. I thought he was a broker/dealer. I saw a
20 web site that said broker/dealer. There was what I
21 consider advertising. I know hedge funds don't
22 advertise. And I wasn't, as I said before, I wasn't
23 familiar with any activity of his in the market
24 either from, you know, the questions I had or
25 experience.

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1 So from my point of view, this wasn't
2 somebody who was an asset manager. This was
3 somebody who was a market maker, so the answer is I
4 had no familiarity with it, with any assets he was
5 managing, other than his own or whoever owned the
6 security firm that he owned or worked at.

7 Q. I'm just trying to be clear here.
8 Mr. Markopolos never said to you in words or
9 substance, I think Bernie's got 20 billion dollars
10 in assets that he's managing for investors?

11 A. He never put a number -- he never
12 told me any specific number about how much he was
13 managing.

14 Q. While you worked at Citi, did anyone
15 other than Mr. Markopolos ever bring up the subject
16 of Bernie Madoff or BLMIS with you?

17 A. I don't remember that. Not that I
18 remember.

19 Q. And just to be clear, I'm asking
20 about anyone including people at Citi or other banks
21 or anyone in general, the world. Do you recall
22 anyone else ever speaking to you --

23 A. There was no -- There was no
24 conversation I had with anyone about Bernie Madoff.
25 Did I hear the name somewhere? I don't know.

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1 There's no conversation I remember participating in
2 where I actually said something or understood what
3 the person was saying.

4 Q. Nothing sticks out in your mind.

5 A. No. While I was -- Before the news
6 broke. Everything is referring to that.

7 Q. Fair enough. Are you familiar with
8 someone named Hazlitt Gill? Does that name ring a
9 bell to you?

10 A. Is the first name Hazlitt and the
11 last name Gill?

12 Q. Yes.

13 A. No.

14 Q. I'll represent to you that we
15 understand that she was a vice president and manager
16 analyst at Citigroup alternative investments. Does
17 that help you place the name?

18 A. We had a quarter of a million
19 employees. I don't think I know anyone in
20 alternative investments.

21 Q. Again, just to be clear, do you
22 recall having any discussions with Ms. Robinson
23 regarding Mr. Markopolos and Madoff?

24 A. The two of them together, no.

25 Q. Because I understand that if she let

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1 him in the building, you probably had a conversation
2 saying Bernie's here to see you --

3 MR. BOCCUZZI: Harry.

4 Q. I'm sorry. Harry is here to see you,
5 but I'm saying a subsequent conversation with
6 Ms. Robinson about Bernard Madoff.

7 A. No.

8 Q. Did you ever meet Bernie Madoff?

9 A. Not that I know of. I didn't know
10 what he looked like until the pictures were in the
11 paper.

12 Q. Mr. Gross, I'm going to hand you what
13 we're marking as Gross Exhibit 4, which has Bates
14 stamps CGMH0001286 through 1320, which appears to be
15 a prospectus for Fairfield Sentry Fund Limited B
16 shares.

17 (Exhibit Gross-4 marked for
18 identification.)

19 Q. The first question is, have you ever
20 seen, reviewed or read a prospective for Fairfield
21 Sentry Fund shares, to the best of your
22 recollection?

23 A. While I was working at Citigroup, I
24 never saw this document or something similar to it.

25 Q. Fair enough. I'm going to ask you to

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1 turn to Page 16 of this document which is at CG --

2 A. Can I clarify my previous comment?

3 Q. Absolutely.

4 A. I said before, Harry had showed me a
5 return series. I don't know where that came from.
6 If that's in here, right, then it's possible he
7 showed it to me. I wouldn't know that it's this
8 document. It's possible I might have seen something
9 in here, not knowing what it was.

10 Q. I appreciate the clarification.
11 Right now, I just want to show you something on Page
12 16 which is CGHH00001301, and there's a section
13 called Investment Strategy. Do you see that?

14 A. Yes, I do.

15 Q. I would like to ask you to take a
16 second to read what's on Page 16?

17 A. Yes.

18 Q. And then a little bit on to 17. And
19 my question is going to be when we were talking
20 about the strategy that you looked at, is this the
21 strategy, to the best of your recollection?

22 MS. REISBAUM: How far should he read
23 on 17?

24 MR. FARLEY: First two paragraphs.

25 A. I've skimmed this. If you ask me

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1 more specific questions, I may look at it again
2 before answering.

3 Q. My question is going to be when we
4 discussed earlier today the strategy that you looked
5 at with Mr. Markopolos, is this the strategy that
6 you were evaluating with Mr. Markopolos, the
7 separate --

8 A. I don't know if it's the precise
9 words but it's close enough that I would assume it
10 refers to the same strategy.

11 Q. Before you had this conversation with
12 Mr. Markopolos, had you ever heard of a split strike
13 conversion strategy before?

14 A. Meaning had I heard those exact words
15 used, or had I heard something described that was
16 equivalent?

17 Q. Both, actually.

18 A. I'm not sure if I heard those exact
19 words being used. As I said before, something
20 equivalent, that to have a position and to collar
21 it, which means to sell a call to pay for a put is a
22 very standard thing that people do in derivatives,
23 so I'm extremely familiar with collaring. We've
24 recommended them, we've written pieces on them. So
25 I'm very familiar with collaring. Whether I saw

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1 someone use these exact words to call it this, I
2 wouldn't call it a split strike conversion.

3 Q. Why is that?

4 A. I call it a collar. That's the --
5 that's the terminology that I think is it an
6 industry standard. I guess if you -- a conversion
7 is when I think of a conversion reversal is when the
8 strike is the same, you buy the index or stock and
9 sell the call and put, that's one conversion.

10 The reversal was going the other way,
11 so I think of the conversion of being by the
12 definition at the same strike. So if someone said
13 split strike conversion, I would say I understand
14 what that could be. I could break it down to pieces
15 but it wouldn't be the term I would use. I would
16 refer to this as a collar.

17 Q. How would you describe a collar
18 strategy in terms of risk profile, in terms of
19 return expectations, in terms of market outlook,
20 three different things?

21 MS. REISBAUM: Objection.

22 Q. You can answer.

23 A. So I'm going to ask you, by the
24 collar, do you mean the collar itself or the collar
25 when overlaid on an existing position, because

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1 they're different.

2 Q. The collar when overlaid on an
3 existing long equities position?

4 A. A collar can be on any type of
5 position, but we'll talk about equities for now. A
6 collar by definition is the purchase of a put to
7 provide a downside floor to the value of the
8 portfolio. And simultaneously, the sale of a call
9 which limits the upside of the -- of the portfolio.

10 Typically people do these together
11 because people want the protection and don't want to
12 pay for it, so the way they do it without paying for
13 it is they sell a call and they use the proceeds
14 from selling the call to buy the put. That's when
15 -- when the prices are exactly the same, it's called
16 a costless collar, but you can do a collar where the
17 put costs more than the call, a customer can do a
18 collar where you receive when the call costs more
19 than the put.

20 So it's a standard thing that -- that
21 investors who are long something would consider as a
22 hedge. There are a number of things, and this I
23 would say, the most popular -- the two or three most
24 popular way to hedge something, the collar would be
25 one of those things. So it's definitely an industry

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1 standard thing that people talk about when hedging
2 an existing portfolio.

3 Q. And are there limited upsides when
4 placing the collar?

5 A. Yes. The upside on the portfolio --
6 if -- if the options are on the same underlying as
7 the portfolio, which means if you own let's say IBM
8 stock and you have a collar in IBM, then you know
9 exactly what the upside is. If your collar is on
10 the S&P, but you have a portfolio, then if the
11 correlation in tracking is exactly 1, then you know
12 your upside. But because they're not exactly the
13 same, your upside could be plus or more if you
14 underperform or outperform the S&P.

15 Meaning that if I sell a call at ten
16 percent on the S&P, the most I can make is ten
17 percent. If I sell a call at ten percent, and I own
18 a portfolio like the S&P, I could make 12 percent if
19 I outperform the S&P by two or if I underperform.

20 So there is limited upside -- I said
21 before, if the call is very close, if I did a 101
22 call, I would only have 1 percent potential upside.
23 If I did a 120 call, I had 20 percent potential
24 upside. So I can pick any strike I want to do the
25 call and pick any strike I want to do the put.

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1 Q. Did you have an understanding as to
2 whether the strategy that you looked at in
3 connection with Mr. Markopolos, the options were in
4 the money, at the money, out of the money?

5 A. Collars usually are done with out of
6 the money options.

7 Q. Why is that?

8 A. To take an example of the stock at
9 100, what someone says -- let's say the stock is at
10 120 -- it's up 20 dollars, so I'm up 20 percent
11 year-to-date, so I would say I'm happy being up
12 let's say 115 and 125. I can live with that. I
13 can't live with going back to zero and I only care
14 about going to 50 percent.

15 So a collar is usually done around
16 the stock price to say, you know, I'm happy with a
17 sale price where it is plus or minus a certain range
18 so usually the range is plus or minus what the given
19 stock price is, so that's -- options are usually out
20 of the money.

21 Looking at the return series, when I
22 saw that none of the returns were very high, my
23 conclusion was that the strike of the option must
24 not have been -- on the call must not have been very
25 far out of the money on the upside and the same

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1 thing on the downside. If there weren't any big
2 down months, the strike of the put must not have
3 been very far away from the strike, from the market.

4 Q. Do the price of options vary
5 depending how close the strike price is to --

6 A. The price of the option depends on
7 four or five factors, one of which is the
8 relationship between the strike and spot price.

9 Q. Is it more expensive generally to buy
10 an option that's at the money?

11 A. The most expensive options are the
12 ones in the money. The at the monies are in the
13 middle and the out of money is the cheapest, so
14 there's a spectrum of way in the money option which
15 can cost as much as the asset itself if it's a call,
16 to way out of the money which costs zero, to out of
17 money option which is going to be in between.

18 Q. Just to be clear, when you looked at
19 the strategy that Mr. Markopolos showed you that
20 Mr. Madoff was advertising, you believed that the
21 options were near the money, out of the money?

22 A. I believe the options were near the
23 money because the return series didn't have any
24 large numbers in either direction.

25 Q. Does the price of the options, would

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1 that affect the returns that can be generated by the
2 overall strategy?

3 MS. REISBAUM: Objection.

4 Q. Again, this is one of these things
5 when I'm asking for your patience because I'm just
6 --

7 A. Obviously, the price is -- is -- it's
8 obviously when you calculate a return of something
9 it's the price at which you trade something. Right?
10 Minus the price at which it settles for. So it's
11 half of the information. Right? There's a purchase
12 price and a sale price so that's half of the
13 information when you do something.

14 The way I would look at something in
15 terms of strategy is not in terms of the dollar
16 price or the percent price, but the relative -- two
17 things. One of the things is the relative cheapness
18 or richness of the option, and the other thing is
19 whether the market on average went up or down. So
20 from my point of view, it's less important that this
21 option actually cost 4.80. What's more important to
22 me is that the market went up on average or went
23 down on average.

24 Understand the return profile of a
25 certain strategy, and also what's more important to

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1 me whether the options are cheaper to fair value.
2 So when I look at something, I understand it not in
3 terms of -- although underneath everything, you
4 know, there's 4.80, actual real numbers. In terms
5 of dimensions I look at, I look at the trend of the
6 market over the time period and look at whether the
7 options are rich or cheap. And I might also look at
8 what's called the term structure and the skew, which
9 refers to the different volatilities.

10 A term structure is different
11 maturities, whether the 1 or 3 or 6 month option is
12 pricing in more or less volatility than the other
13 ones, and also the skew, whether the higher strikes
14 are pricing in less volatility more than the lower
15 strikes.

16 So from my point of view, looking at
17 a strategy, I would look at the level of the
18 volatility, the term structure of the skew, and the
19 market direction. And underneath all those are
20 actual real prices but in terms of my conceptual
21 framework, what I care about are those more abstract
22 concepts in terms of describing a strategy as
23 opposed to talking about a particular price.

24 Q. But with respect to the Madoff
25 strategy that you were looking at, did you

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1 understand that the options component was for
2 revenue generation or generating returns or simply
3 for the hedge position?

4 A. I considered actually a bunch of
5 possibilities, like I said before. I considered the
6 possibility that a -- that like I said before, that
7 he was using different types of options and trying
8 to pick up some incremental returns by doing that,
9 but it's not consistent with that, because they're
10 both S&P.

11 I considered that there was some kind
12 of dynamic strategy that I said before, on signals,
13 but I don't see that here either. So it doesn't
14 seem to me that a strategy that's described this
15 simply can actually generate positive returns. You
16 know, obviously if you're just going short the
17 market, the market goes down, you're going to make
18 money. That's not what I'm talking about here. I'm
19 talking about relative to owning a portfolio.

20 So -- so I basically tried to figure
21 out -- from my point of view, I don't care whether,
22 you know, whether the net -- the trade takes in a --
23 on Day 1 takes in money or results in paying out
24 money. I care whether that money -- how that
25 compares to an average, how much those options are

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1 worth at expiration. So the question was, was it to
2 manage risk or was it for income --or what was your
3 question again?

4 Q. Risk management or to --

5 A. I understood that -- I -- I
6 considered various possibilities, and I would say
7 that I understood that some of it had to do with
8 reducing risk and --

9 Q. When you were looking at the strategy
10 that Mr. Madoff claimed to have be executing, did
11 you have any understanding of whether the index --
12 Sorry -- whether the options component was index,
13 exchange listed options or over the counter options?

14 A. The strategy itself doesn't specify.

15 Q. Did you have any --

16 A. However, I will say that on the next
17 page, it does specify. It does mention over the
18 counter.

19 Q. Are you familiar with the over the
20 counter S&P 100 Index market?

21 MS. REISBAUM: Objection.

22 A. I'm familiar with the over the
23 counter market and index options. I'm familiar with
24 the OEX, I'm not sure whether anyone in real size or
25 on a regular basis actually trades the OEX on an

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1 over the counter fashion.

2 Q. What can you tell me about that,
3 Mr. Gross?

4 MS. REISBAUM: Objection.

5 Q. Again, I'm interested in knowing what
6 you know about the OEX, over the counter market and
7 your comment that you're not sure whether anyone
8 really trades in that.

9 MS. REISBAUM: Objection.

10 Q. You can answer.

11 A. I would say it wouldn't surprise me
12 if there were trades there. I would say the primary
13 market for -- the OEX is the hundred stocks that the
14 CBOE put together that have options. It's their
15 index. There are some ETFs linked to it. Those
16 came out recently. But the benchmark that most
17 people follow in terms of managing money is the S&P
18 500. The people also look at the Dow which is
19 famous but really isn't benchmarked as much because
20 it's weighted in a strange way. People also look at
21 the Russell, mid cap, small cap, growth in value.

22 There are all kinds of things that
23 people use and track as sort of common things where
24 if you talk to managers, yes, I've benchmarked this,
25 I know about this, et cetera. So in terms of most

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1 popular things people follow, care about, watch,
2 trade, I would say -- I mentioned the S&P and
3 obviously for different universes, there's a small
4 cap benchmark, there's international, and there are
5 standard ones.

6 And I would say the OEX is not one of
7 those. The OEX is something the CBOE created to
8 generate, you know, what it thought was interesting
9 at the time. And it's -- I used it for research
10 purposes because I would compare the individual
11 options to the index options. And for the S&P,
12 there are 500 of them. So the calculation was
13 rather difficult and it was simpler to just use a
14 hundred stocks, so I used the OEX.

15 So for me it was just a simple way of
16 doing it. But in terms of something that
17 professional managers use for hedging and trading,
18 it's not that popular. We don't get many requests
19 for OEX options, although there's some out there,
20 and I'm not sure I ever -- I think I did a swap once
21 on OEX, but I'm not sure if -- if something was a
22 large cap and it was over the counter, I would say,
23 you know, my numbers aren't exact here. I would say
24 like 95 percent of the time, we're talking about the
25 S&P and 5 percent the Dow.

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1 But I never heard of an over the
2 counter request involving -- I never heard -- it
3 wasn't standard procedure that we would hear an over
4 the counter request regarding the OEX. I'm not
5 saying it never happened. I'm not saying it would
6 be the most surprising thing in the world. It just
7 wasn't the normal course of business that we did on
8 a regular basis.

9 Q. Setting aside your understanding of
10 what Citi did, did you have any understanding as to
11 whether other banks were large players in the
12 over-the-counter OEX options?

13 MS. REISBAUM: Objection.

14 A. I only worked at Citi, so I don't
15 know what other people are doing. I -- You know, I
16 -- I would recommend, if there was a mispricing
17 between the OEX and the S&P I would recommend to
18 someone who cared about those mispricings and the
19 trade opportunities, so I would look at it that way.
20 I would say it was not the industry standard way
21 that people looked to manage their risk.

22 Q. In your opinion are over the counter
23 OEX Index options more or less expensive to trade
24 than listed OEX Index options that are traded on the
25 CBOE?

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1 MS. REISBAUM: Objection. You're
2 asking his opinion?

3 MR. FARLEY: Yes. Absolutely.

4 MS. REISBAUM: He's not an expert
5 witness.

6 Q. You can answer the question.

7 A. I don't have much experience
8 comparing the over-the-counter OEX with the listed
9 OEX, so I can --

10 Q. Okay. Generally speaking in your
11 experience in options is the over-the-counter market
12 typically more expensive or less expensive than a
13 listed exchange --

14 A. I think --

15 MS. REISBAUM: Objection.

16 MR. FARLEY: There's no objections
17 here.

18 A. I would say they're different. I'll
19 explain the differences and then we can come to a
20 conclusion on that.

21 A listed options has a commission
22 that's paid out up front and also on -- when the
23 trade expires it may have a commission there as
24 well, depending whether -- The money option just
25 expires. An over-the-counter option doesn't have a

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1 commission, so the commission there's going to be a
2 different commission cost, so if someone quotes
3 somebody the exact same price for the listed over
4 the counter option then the over the counter option
5 is actually cheaper because you don't have to pay
6 commission. However, someone may quote you a price
7 that takes that into account and says, If I'm going
8 to quote the same price, if I'm going to make three
9 cents quoting this price listed and make the same
10 amount of money I can quote the price 3 cents away,
11 so if you show me the same price for something I can
12 tell you which one's cheaper.

13 So the other thing is there's going
14 to be possibly a different margin requirements
15 although it's not the cost of the options, the cost
16 of doing business for doing something listed over
17 the counter, and there's going to be a different
18 cost in terms of work to process the trade to clear,
19 to have sent paperwork, et cetera, and there's going
20 to be some costs associated with that.

21 We used to say for every over the
22 counter it's going to cost us \$10,000 in terms of we
23 have to draw up some paperwork. We have to send it
24 back and forth. Just an allocation of what it's
25 worth, so to do an over-the-counter trade where the

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1 profit is small it may not be worth our time,
2 although in the practice of a customer who does a
3 lot of business we do it anyway. It's part of the
4 transactions, so that the costs are -- You know, the
5 price may be the same or may be different. There
6 may be a commission, and there are also the costs of
7 how much capital you have to do the trade, and
8 there's also the costs in terms of the -- the costs
9 in terms of the paperwork and the trouble in terms
10 of having to deal with the transaction yourself as
11 opposed to having someone else responsible for
12 selling and processing the trade.

13 So some people think that, you know,
14 there's more transparency in the listed markets.
15 They would rather trade there. Some people think if
16 they do something over the counter they can get a
17 better execution because people won't know what
18 they're doing. With a listed trade there are rules
19 you have to show -- If a customer wants to trade
20 with a -- I'm not going to get the rules exactly
21 right, so I'll tell you in general.

22 If a customer wants to trade a
23 certain product with us there are rules on the
24 Exchange that we have to let the people on the floor
25 have part of the trade. We can't simply say, We're

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1 doing this trade, and that may result in an inferior
2 price, so sometimes it's better for the customer,
3 may get a better price if it's done over the counter
4 because we can do it without involving people on the
5 floor. So in terms of cheaper there are five or six
6 dimensions to look at here in terms of getting a
7 better price, in terms of moving the market less, in
8 terms of having people -- It's not a simple
9 question. It's a more complicated question, and
10 some customers may say I understand all that. I
11 prefer to do it this way. It fits my business this
12 way. So there's no objective question whether one
13 is cheaper or this one's cheaper. There's a
14 decisions, a business decision, that's made, you
15 know, on either as a policy of the firm or on a
16 case-by-case basis, so --

17 Q. Does the CBOE keep track of the
18 volume of OEX Index options traded?

19 A. Every exchange keeps track of the
20 volume of OEX Index options ever -- It's one of
21 their responsibilities to keep track.

22 Q. Is there any way to measure or
23 evaluate the volume of OTC OEX Index options that
24 might be transacted to the best of your knowledge?

25 A. To measure or to estimate?

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1 Q. I'd actually like to know both.

2 A. I don't think there's any way to
3 measure the volume of over-the-counter options that
4 are out there.

5 Q. What about to estimate?

6 A. There are -- There are estimations,
7 and the way we used to do that is to say, This is
8 how much our position is. Right? This is how much
9 we do, and we think in this market we're this
10 percent of it, meaning in this market we're really
11 good and we're 19 percent. In this market we're a
12 small player. We're three percent. We know someone
13 over there who used to work there and they said they
14 were 11 percent, so the estimates I'm aware of are
15 just a question of, you know, projecting outward
16 from what we know, which is this is how big I am and
17 this is how big the market must be or, you know,
18 from -- Other ways would be to know which customers
19 are in the business of doing these things and
20 knowing how much assets they manage, sort of keeping
21 track of, This mutual fund has this much money. We
22 know they do this program, so we can guess they're
23 this much, et cetera, but for business purposes, you
24 know, managers trying to figure out how big the
25 market is and whether -- you know, what the -- If

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1 the market is this big we need -- we should be able
2 to get this percent of it, We can make this much
3 money, et cetera, so it's a standard thing to try to
4 figure out how big a market is, but I'm not sure
5 it's really a measurement. It's more of an
6 estimation to know how big the market is.

7 Q. With respect to OEX Index options, do
8 you have a sense of whether more volume is traded on
9 the CBOE or in the over-the-counter market?

10 A. I don't know, but if you ask me to
11 guess I would say that more is probably traded on
12 the listed market.

13 MR. BOCCUZZI: Actually I don't think
14 we want you to guess.

15 MR. FARLEY: I actually do at this
16 point.

17 MR. BOCCUZZI: Just to be fair to Mr.
18 Gross, he's not here as an expert. He's not here to
19 speculate. I think we should tie it back to what he
20 did when he was at Citi.

21 MR. FARLEY: Again, this is a 2004
22 deposition. This is a different beast. I'm here to
23 find out as much as I can. I'm being absolutely
24 clear. If it's not his personal knowledge we know
25 that, but this is a 2004 deposition. These

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1 questions are perfectly acceptable.

2 MR. BOCCUZZI: You keep saying that
3 about 2004, but I don't think it's completely
4 anything goes, asking witnesses to speculate and
5 trying to expertize them. He's not being
6 compensated. I would just -- Ask your questions,
7 but I think you should be focused on what he did,
8 what he evaluated, and obviously there's some range,
9 but he's not here to be a free-flowing expert.

10 MR. FARLEY: I'm not going to engage
11 you point by point here. He's here in his capacity
12 of a former head options trader --

13 A. I'm not a trader.

14 MR. FARLEY: Options expert at Citi.
15 I'm asking questions about options.

16 MR. BOCCUZZI: He was the research
17 desk. He wasn't the options expert at Citi. I
18 think we have to be fair to the witness.

19 MR. FARLEY: I have every intention
20 to be fair to the witness.

21 Q. When you looked at with
22 Mr. Markopolos the strategy that Mr. Madoff
23 purported to engage in that we've been discussing
24 did you have any sense about whether these trades in
25 the options were done over-the-counter or on a

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1 listed exchange?

2 MS. REISBAUM: Objection.

3 A. I asked the question of the people I
4 knew. Either question. The answer I got is they
5 were not familiar with any trades.

6 Q. In your experience with the OEX Index
7 market is there generally more liquidity on the
8 exchange or in the over-the-counter market?

9 A. I have very little experience with
10 the OEX, the counter market, so I don't know much
11 about it. I would assume there's more in the listed
12 market simply because I don't know anything about
13 that.

14 MS. REISBAUM: Objection.

15 Q. Can you turn to Page 17. Question
16 Number 3 and an answer. Can I ask you to take a
17 look at that?

18 A. Yeah.

19 Q. In trying to resolve what you viewed
20 as a discrepancy with Mr. Markopolos with respect to
21 the stated strategy and the returns generated did
22 you consider the issue of market timing --

23 A. Yes.

24 Q. -- as a potential explanation?

25 MS. REISBAUM: Objection.

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1 A. Yes.

2 MR. FARLEY: There is no -- There's
3 no objections here. Okay? You're here as a
4 courtesy to protect the privilege. There's no
5 objections in 2004, and clearly it's distracting the
6 witness. Okay? I please ask you not to do that.

7 MS. REISBAUM: You're asking me not
8 to object?

9 MR. FARLEY: There's no objection to
10 be made. It's not --

11 MS. REISBAUM: I think you misstated
12 his testimony.

13 MR. FARLEY: Can we read back the
14 question, please?

15 (The last question is read back by
16 the reporter.)

17 Q. You can finish your answer.

18 A. When you asked earlier I said I
19 exhausted -- I basically tried different --
20 different possibilities. I don't know how many I
21 enumerated, but one of them would have been the
22 ability to time the market, so I did consider that.

23 Q. And what did you consider in that
24 regard, sir?

25 A. I thought if that's what was going on

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1 in the description it would talk more about that.

2 Q. Did you view the description that you
3 read as a market timing strategy?

4 MR. BOCCUZZI: Wait. Wait. You
5 asked the one that he read, and then he's looking
6 through this one. Are we talking about those four --

7 MR. FARLEY: I thought we established
8 it was essentially the same strategy in words or
9 substance.

10 A. What I said before was some of the
11 stuff was the same and some was not the same.

12 Q. Okay.

13 A. So --

14 Q. The strategy of entering into a long
15 equities position and putting on a collar.

16 A. What I said was the strategy as
17 described, right, was inconsistent with the returns
18 and the strategy was -- There were things that were
19 missing in terms of me understanding it, and that's
20 why I speculate in terms of this could be this, it
21 could be this, could be this, so I didn't really
22 understand what it was. I thought, you know, given
23 these constraints it could be six or seven different
24 things. Considered each one separately. It's not
25 as if I said, It's this, It's not this. I said when

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1 I look at things, could it be this, could it be
2 this, could it be this, so I didn't have a firm
3 opinion that, you know, it had to be this, it wasn't
4 this. These were things I considered as a puzzle;
5 how could this be this?

6 Q. I don't want to mischaracterize your
7 testimony, but I believe you said after you
8 considered all these things you came to the
9 conclusion that none of them would resolve the
10 discrepancy you saw between the returns --

11 A. That's correct.

12 Q. -- and the strategy. And one of
13 those things was market timing. Correct?

14 A. Yes. I didn't say it at the time,
15 but, yes, that was one of the things I thought
16 about.

17 Q. Generally speaking, a long equity
18 strategy with a collar, is that a market-neutral
19 strategy or is it a bullish/bearish strategy?

20 A. Depends on the collar. If the collar
21 is infinitely tight, meaning the strikes are the
22 same, the same as selling futures swap, at that
23 point it's market-neutral. It would be called in
24 the industry going to cash. If the collar is very
25 wide it's the same thing as having the S&P, and

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1 depending how wide the collar is, you talk about the
2 delta of the collar. If the delta is 50 it's like
3 having a 50-percent exposure, so you're using
4 options, but also using futures and other
5 instruments you can take a long position and change
6 them to anything that ranges from having, without
7 using leverage, from zero to 100-percent exposure.

8 Q. When you were evaluating the strategy
9 that Mr. Markopolos showed you that Mr. Madoff was
10 employing --

11 A. I don't know if he was employing. I
12 just know that I read it.

13 Q. Fair enough. Did you consider the
14 utility of putting on the collar if the strategy
15 depended on market timing?

16 A. Does it make sense to me or do I
17 remember considering that exact thing?

18 Q. Both.

19 A. It does makes sense to consider that.
20 I don't know if I considered that in those exact
21 terms, but it's something I thought about. I
22 mentioned before about the options, that either the
23 options had a value because they were options or --
24 That's why it was confusing to me. If what you're
25 really trying to do is time the market you could

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1 just use futures as well. It was unclear to me what
2 the advantage was -- You certainly could use them,
3 but the question is why would someone use them.
4 It's unclear to me why that is the case.

5 Q. And there is certainly expense
6 associated with using the options.

7 A. Using swap. Any time there's a trade
8 there's an expense, and there's a choice to be made
9 between -- you know, of the four ways to go short or
10 hedge or whatever, there's a, you know, cost for
11 each one, and certain people may prefer to do one as
12 opposed to the other. I can't tell you one is
13 better or worse in the absolute sense, but it seems
14 to me someone should -- there should be some reason
15 why I should figure out why -- why someone does it
16 or -- there's probably some reason why someone does
17 something, and it's -- it's interesting to figure
18 out why that would be.

19 Q. In your conversations with
20 Mr. Markopolos, apart from you checking with the
21 index desk and the salespeople did the issue of who
22 are the counterparties to these options trades ever
23 come up?

24 A. The question Harry asked is whether
25 we knew about it, not whether -- He didn't ask me to

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1 find out, you know -- He didn't ask me to ask any --
2 you know, Call everyone you know, or Call around.
3 He just said, Do you see it here. That was the way
4 he posed the question. That was the question I
5 answered.

6 Q. And in those same conversations did
7 the issue come up whether BLMIS or the feeder funds
8 were the counterparties to the options contracts?

9 MS. REISBAUM: Objection.

10 A. I wouldn't know what BLMIS actually
11 meant.

12 Q. Madoff Securities.

13 A. The only entity I knew about was --
14 was something called Madoff something because I saw
15 a web site. That was the only thing that had a name
16 associated with it.

17 Q. I guess what I'm asking, again
18 poorly, is did the issue of whether Madoff was
19 acting as principal or agent with the options
20 contracts ever come up?

21 A. I -- I said before, I wasn't -- I
22 thought he was a market maker. I didn't think he
23 was managing money, so as a market maker, I guess a
24 market maker could do something either as a
25 principal or agency. So no. The issue didn't come

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1 up.

2 MR. FARLEY: Why don't we take a
3 lunch break.

4 (Luncheon recess taken.)

5 Q. Good afternoon. We're returning back
6 on the record at 1:22. I'm handing you what has
7 been marked as Gross Exhibit 5 which has the Bates
8 Stamp CGMH00000332 through 334 and ask you to take a
9 look at that.

10 (Exhibit Gross-5 marked for
11 identification.)

12 Q. First of all I'm going to ask you,
13 are you familiar with an Adam J. Albin?

14 A. No.

15 Q. I'm asking you to look at the
16 attachment to this email, and my question is going
17 to be, is this the type of document that you looked
18 at with Mr. Markopolos when you said you reviewed
19 something that showed both a description of the
20 strategy and returns?

21 MS. REISBAUM: Objection.

22 Q. You can answer.

23 A. I would say the information is
24 equivalent. Whether it was in this format, I don't
25 know. The information is similar.

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1 Q. And in looking at this particular
2 document you'll see on the bottom left-hand corner
3 toward the middle there's something called a Sharpe
4 ratio. Do you see that?

5 A. Yes.

6 Q. Are you familiar with a Sharpe ratio?

7 A. Yes.

8 Q. What is a Sharpe ratio?

9 A. A Sharpe ratio, there's the sort of
10 formal and informal definition. One would be the
11 average return divided by the standard deviation of
12 the return. The other one would be the average
13 return minus the risk-free rate divided by the
14 standard deviation, so one of them is called sort of
15 the excess return over the interest rate, and the
16 other one is just without doing that, so people when
17 doing that would interchangeably use one or the
18 other. One of them is probably the formal
19 definition. One of them is named after Sharpe who
20 was an economist who won the Nobel prize.

21 Q. Setting aside the mathematics of it,
22 what is a Sharpe ratio meant to represent or
23 measure?

24 A. In the broadest sense mathematically
25 it's the signal-to-noise ratio or the information

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1 ratio meaning if I were to tell you I would make ten
2 percent plus or minus one percent that would sort of
3 give you a range -- The standard deviation is --
4 Assuming normal distribution, two-thirds of the time
5 you would be within the range, one-third of the
6 range -- outside the range.

7 So if -- If I were to make ten
8 percent plus or minus one percent my returns would
9 look something like 9, 10, 11 average. If I were to
10 make 10 percent plus or minus 15 percent then my
11 returns could be anywhere, you know, 65 percent of
12 the time from minus 5 to 25, so if you were to ask
13 me, In any given year what's the probability you're
14 going to make money, in the first case, 10 percent
15 plus or minus 1, it's almost 100 percent I'll make
16 money. That's a Sharpe ratio of 10. I would have
17 to have ten standard deviations away to lose money.
18 In the other case where there's 10, plus or minus
19 15, there's going to be let's say probably 40
20 percent of the time you'll lose money.

21 So the information ratio, the Sharpe
22 ratio, is a measure of whether the information
23 presented can be due to chance or whether there's
24 actually something real going on that's explained by
25 the results. Whether you can take something in the

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1 past and reflect forward in the future.

2 Q. Does the concept of risk, is that
3 part of a Sharpe ratio?

4 A. It's half of it. It's the return or
5 the excess return. You can define "return" either
6 way, right, divided by the risk, and you're going to
7 get different Sharpe ratios for the same process
8 whether you talk about daily, weekly, monthly,
9 annually.

10 There's a scaling factor. If you
11 give me the monthly I can tell the annual, but the
12 Sharpe ratio needs to be specified which maturity it
13 is because you give me the same data, I'll give you
14 different Sharpe ratios whether you ask me for a one
15 year or et cetera.

16 Q. Looking at 2.81 Sharpe ratio for this
17 fund, what does that mean, if anything, to you?

18 MS. REISBAUM: Objection.

19 MR. BOCCUZZI: Can you ask him back
20 then.

21 Q. In your conversation with
22 Mr. Markopolos do you recall ever discussing the
23 Sharpe ratio of any fund or Madoff feeder fund or
24 Madoff returns?

25 A. I remember discussing the risk/reward

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1 profile, which means that if this table wasn't here,
2 right, and I had the data, right, then it -- and I
3 had the data, it would be something I would do
4 myself. Right?

5 If I looked at this -- at this in my
6 mind I would be thinking in those terms whether or
7 not I actually saw the table, so it's a context of
8 what I use to look at things, so it's entirely
9 possible I spoke about it. I don't know if it was
10 because I read it or if I did the calculations or I
11 just thought about it looking at the graph.

12 Q. And to the best of your recollection
13 do you recall thinking about the risk-return
14 profile, with the Sharpe ratio being high or low,
15 something that was unusual to you given the strategy
16 you were looking at? I'm just trying to get your
17 sense of what, if anything, you talked about with
18 Mr. Markopolos about the Sharpe ratio.

19 MS. REISBAUM: Objection.

20 A. I don't remember specifically using
21 the term "Sharpe ratio." I did speak before that
22 the return profile was inconsistent with the
23 strategy. What I mean by the return -- Part of what
24 I mean by the return profile has to do with
25 something about the mean or the average which I

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1 mentioned before and the risk.

2 So whether I used the word "Sharpe
3 ratio," I definitely was referring to the two most
4 important things I look at in this case or something
5 similar to this which are average and standard
6 deviations, so I don't know if I used the terms.
7 When I talked about risk profile I was intending
8 something to capture the sense of, you know, how
9 many minus -- how many negative things there are,
10 et cetera.

11 Q. In your conversations with
12 Mr. Markopolos about Madoff do you recall discussing
13 the number of down months or years, if any, that
14 Madoff had reported?

15 A. I don't know if it was actually
16 discussed or whether I looked at the graph or the
17 chart or the Sharpe ratio to figure out there were
18 very few of them.

19 Q. What, if any, conclusions did you
20 draw from that?

21 A. I mentioned before that if someone
22 only had fixed income, right, there would be very
23 little risk, but also very little return, and if
24 someone had equities there would be a lot of down
25 months and the high would be somewhere in between,

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1 so my view is that the strategy as described either
2 has to be, you know, some continuum between fixed
3 income with low returns and low risk or equity with
4 potentially high returns and high risks.

5 Q. In your discussions with
6 Mr. Markopolos regarding Madoff and BLMIS did you
7 ever discuss whether Madoff could be front-running?

8 A. No.

9 Q. You understand what front-running is?

10 A. Yes.

11 Q. That subject never came up?

12 MS. REISBAUM: Objection.

13 Q. In your conversations with anyone at
14 Citi while you worked there did the issue of whether
15 Madoff was front-running ever come up?

16 A. No.

17 Q. In your conversations with
18 Mr. Markopolos did you discuss the correlation
19 between the strategies, stated returns, and the S&P
20 100?

21 A. I don't remember. If I were to talk
22 about the return profile I would have compared it to
23 the S&P, because that's what I use, but they're very
24 highly correlated to each other, so if you showed me
25 one versus the other I couldn't tell which is which,

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1 so my guess is I probably in thinking about this
2 compared it to the S&P and in my mind they're --
3 they're proxies for each other. For all intents and
4 purposes they're very similar.

5 Q. And what, if any, conclusions do you
6 draw about the returns based on the similarities of
7 the profiles?

8 MS. REISBAUM: Objection. Today or
9 at the time?

10 MR. FARLEY: At the time.

11 A. I said before that it looked neither
12 like a fixed income result or an equity result or
13 anything in between, so either the returns are not
14 the returns or the strategy is not the strategy or
15 there's something else going on that I'm not aware
16 of, so ...

17 Q. And, again, if you don't remember,
18 you don't remember, but do you recall Mr. Markopolos
19 ever providing you with a copy of a monthly
20 brokerage account or confirmation from Madoff
21 Securities?

22 A. He never provided me any documents.

23 Q. Did there come a time when you
24 endeavored to learn whether Citi had any
25 transactions involving Madoff or Madoff feeder fund?

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1 MS. REISBAUM: Objection.

2 Q. Again, I'm setting aside when you
3 queried the desk, the index desk --

4 A. And anything that's privileged?

5 Q. No. Nothing privileged.

6 A. Then no.

7 Q. Let me ask you this just to be clear.
8 Not in preparation for this deposition. While you
9 worked at Citi did you ever have a conversation with
10 anyone including a lawyer about Citi's dealings with
11 Madoff or Madoff Securities?

12 A. After the news broke? After the news
13 broke or before?

14 MR. BOCCUZZI: That was when you were
15 not with Citi anymore.

16 MS. REISBAUM: Can we be clear again
17 that you're not looking for privileged information?

18 MR. FARLEY: The fact of the
19 conversation is not privileged. I'm just asking. I
20 suspect the answer is no.

21 A. The timeline is I left in November.
22 The news broke in December, but I was officially
23 still employed until February, so you'll have to be
24 more specific.

25 Q. Before the news broke did you ever

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1 have a conversation with anyone at Citi including a
2 lawyer --

3 A. No.

4 Q. -- about Madoff or Madoff Securities?

5 A. No. You asked many times if I had
6 conversations at Citi, and I told you about the
7 conversation I had.

8 MR. BOCCUZZI: Just to be clear for
9 everyone, I let Mr. Gross answer the question
10 including a lawyer because in my view an answer
11 whether yes or no is the equivalent of whether we
12 logged something on a privilege log where it would
13 say, Conversation, who was involved, and topic.

14 MR. FARLEY: Agreed. No waiver.

15 MR. BOCCUZZI: And that was in the
16 nature of the answer.

17 Q. In your transactions involving
18 options over the years did you ever have an occasion
19 to use or trade with a European counterparty for an
20 option?

21 A. I don't understand the question.

22 Q. I'm asking --

23 A. You're asking about my personal
24 trades?

25 Q. No. In your capacity at Citi did you

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1 support the --

2 A. I was responsible for salespeople in
3 Australia, Europe, Japan, and Hong Kong, and the US,
4 so the answer is it was -- I was -- I was a research
5 person, so we provided services to customers in
6 every region about every product.

7 Q. Maybe you've already answered this,
8 but as a research head if one of your salespeople
9 wanted to know about volumes of OEX Index options
10 traded both on a listed exchange and
11 over-the-counter how would you go about --

12 A. The exchange -- Every day the volume
13 and open interest are available on things like
14 Bloomberg, Reuters, et cetera, so if someone asked a
15 particular question on a particular day I would look
16 at the Bloomberg screen. We also download every --
17 everything from every market and save it in
18 databases, so if somebody says I want to look at the
19 total open interest or volume for IBM or anything
20 else I could write a program or have programs that
21 would pull that time series out, so in terms of
22 listed stuff there's multiple source information,
23 exchange the primary source which the information is
24 reflected again, things like Bloomberg, Reuters, our
25 system, et cetera. The Exchange publishes

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1 statistics, and the OCC which is the Options
2 Clearing Corp., not the other OCC, which also has
3 statistics. I don't know whether the statistics are
4 by ticker or whether it's by, you know, category,
5 all the equity options, so if somebody asks about
6 listed stuff, right, I would look on Bloomberg, look
7 on our system, the Exchange, et cetera. I would do
8 one of those things. We have the information, and
9 the question is, you know, they might want -- You
10 know, we may have to add it up. There may have to
11 be some additions, et cetera, but the source is
12 always the Exchange, and then the only question is
13 in what format are we pulling it out, in what format
14 are we presenting it. That's for the listed.

15 Q. And for the Exchange --

16 A. List the same thing as the Exchange.

17 Q. I'm sorry. For over-the-counter?

18 A. Over-the-counter, I assume there's
19 some regulator that keeps track of total aggregate
20 outstanding, but it's not by ticker. As I said
21 before, I would ask around essentially and, you
22 know, see how much we did and see how much is quoted
23 and give a sense from people, traders and
24 salespeople, you know, how much do you see, how much
25 do you do, how much of the market are we. There are

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1 also some surveys that -- that customers, you know,
2 talk about how much commissions or volumes, so
3 there's some sense we can figure out from the market
4 as well.

5 Q. Are you familiar with an entity named
6 Auriga International?

7 A. Am I familiar now or before I left
8 Citi?

9 Q. Before you left Citi.

10 A. No.

11 Q. Were you ever asked to have any
12 involvement in a swap transaction between Auriga and
13 a Citi entity?

14 A. No.

15 Q. Before preparation for this
16 deposition were you aware that a Citi entity had
17 conducted a total rate swap transaction with a Swiss
18 hedge fund named Auriga?

19 A. No.

20 Q. Would it be standard practice or
21 standard operating procedure for your group to be
22 consulted if a Citi entity was structuring or
23 offering a derivative equities product?

24 MS. REISBAUM: Objection.

25 Q. I guess I'm trying to have a better

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1 sense of when does the strategy group get involved
2 with other parts of the bank who, for example, might
3 be offering total-return swaps linked or referenced
4 to a Madoff feeder fund?

5 MS. REISBAUM: Objection.

6 Q. Was it not normal for your group to
7 get involved? You weren't always involved in
8 derivatives that are being offered by the banks?
9 I'm just trying to understand this.

10 A. We weren't involved in any
11 transactions linked to hedge funds. Our stuff
12 involved publicly-listed securities.

13 Q. I probably should have asked you that
14 before.

15 A. I wouldn't even know what a
16 transaction looks like or how it's structured. It's
17 not something I do. It's like asking something
18 completely out of someone's field. I have a
19 familiarity of the world but not that part of the
20 world.

21 Q. Just to be clear, your group did not
22 support hedge fund transactions that the bank might
23 be engaged in, strategy group?

24 MS. REISBAUM: Objection.

25 A. Your question is ambiguous. By

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1 "hedge fund" do you mean linked to hedge fund or
2 done by hedge fund?

3 Q. Done by hedge fund.

4 A. Most of our customers were hedge
5 funds, and that's who I spoke to all the time, and
6 they were trading publicly-listed securities. I
7 helped hedge funds trade securities. I didn't get
8 involved with the structuring of derivatives whose
9 underlying asset was a hedge fund, so there's a lot
10 of involvement with hedge funds but not that part of
11 the hedge fund.

12 Q. And I suspect I know the answer to
13 this, but before becoming --

14 MR. FARLEY: Strike that.

15 Q. Before your deposition and getting
16 prepared for it were you aware that Citibank had
17 made a loan of approximately \$300 million to a hedge
18 fund owned by Tremont?

19 A. No.

20 Q. Did you ever learn whether Citi as a
21 bank had a view on Madoff or Madoff exposure?

22 MS. REISBAUM: Objection.

23 Q. Prior to you leaving in November of
24 2008?

25 A. No.

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1 Q. Are you familiar or do you know Erwin
2 Parviz?

3 A. No.

4 Q. I'm going to ask you a couple names.
5 Marc Fisher?

6 A. The name sounds familiar, but there
7 are a lot of Fishers.

8 Q. Sean Flanagan?

9 A. Again, common name, but no.

10 Q. Vishal Mishra?

11 A. No.

12 Q. Ramesh Gupta?

13 A. Yes.

14 Q. How do you know him?

15 A. My group was programming because we
16 were doing -- I guess we call it strategy, but we
17 call it analysis, both to write reports and to
18 provide it for customers, so the databases that we
19 used for the information were the same databases
20 that the firm used to keep track of -- I said before
21 we downloaded the entire -- Every day we downloaded
22 all the options. Right? Well, that's stored
23 somewhere, and that's called a para drive, which
24 means instead of pulling out you know just one day
25 you could pull out the -- let's say the option for

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1 the whole time series, so it's stored in different
2 ways, so the database that we use was the same
3 database that -- that he used. Either he was
4 responsible for, et cetera, so -- so -- so we shared
5 common databases about -- that we used to pull
6 information out to do our analysis. Sort of common
7 information about IBM options or something like
8 that.

9 Q. What did you understand Mr. Gupta's
10 role at Citi to be?

11 A. I wasn't very clear about what he
12 did. I knew he wasn't a trader or sales function.
13 I knew he was in some support function. I don't
14 know exactly. Probably had something to do with a
15 support function that had some technical aspect to
16 it because of the data.

17 Q. What about Brian Leach?

18 A. I don't know Brian Leach.

19 Q. I take it, Mr. Gross, you have no
20 personal investment with or through Madoff
21 Securities?

22 A. My investments were with -- were
23 through Citibank. Citigroup.

24 MR. FARLEY: Why don't we give me a
25 couple minutes to gather my thoughts.

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1 (Recess taken.

2 MR. FARLEY: Back on the record at
3 1:51.

4 Q. Mr. Gross, given your area of market
5 research, why is it that you did not record or
6 otherwise memorialize your conversations with
7 Mr. Markopolos regarding Madoff?

8 MS. REISBAUM: Objection.

9 A. I had thousands of conversations
10 working at Citi, most of which I didn't take notes
11 on.

12 Q. I guess what I'm trying to understand
13 is those thousands of conversations probably weren't
14 of the nature of someone suspects someone's a fraud.
15 I'm trying to understand in terms of a
16 market-research perspective whether you, in fact,
17 memorialized or otherwise reported this market bit
18 of information and, if not, why not?

19 MS. REISBAUM: Objection.

20 A. Well, what actually was there is
21 there was no information to record. Right? That
22 wasn't a volume, and there wasn't anything going on,
23 so, you know, research actually is about something.
24 I asked the question, and the answer I got is there
25 was no activity.

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1 Q. Which didn't square with what was
2 being reported as you read it. Correct?

3 MS. REISBAUM: Objection.

4 A. It wasn't my normal course of
5 business -- of my responsibilities to investigate
6 other participants in the market.

7 Q. During your discussions with
8 Mr. Markopolos did he or you ever discuss reporting
9 Madoff to the SEC or any other regulatory agency?

10 MR. BOCCUZZI: Just to make an
11 objection, you say "discussions" in the plural. I
12 think he discussed one, but I just want to -- So
13 there's no confusion.

14 Go ahead now and answer the question.

15 Q. To the best of your recollection.

16 A. There was no discussion like, We're
17 going to do this, We should do this, et cetera. Did
18 I say something about, you know, maybe someone
19 should be closed down or something? I may have said
20 something like that without saying who.

21 Q. A couple of times today you've
22 answered the question with an appropriate modifier
23 of "while I was at Citi." I just want to ask this
24 question to make sure the record is clear. Did you
25 do any further investigation or any investigation,

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1 analysis, or work regarding Madoff or Madoff
2 Securities on your own time while you were not
3 sitting in your Citi office?

4 MS. REISBAUM: Objection. Do you
5 mean during the time period in which he was employed
6 by Citi?

7 MR. FARLEY: Absolutely.

8 MS. REISBAUM: Did he go home and do
9 something --

10 MR. FARLEY: That's exactly what I'm
11 asking.

12 A. Are you asking the two months after I
13 left Citi after the news broke or while I was there?

14 Q. While you were there.

15 A. No.

16 Q. I'm asking because you said you're a
17 puzzle solver. I'm curious to know if this peaked
18 your interest other than that day you had the
19 conversation and said, This doesn't seem right, did
20 further work or not. That's all I'm trying to
21 figure out. No?

22 A. No.

23 Q. While you were at Citi did you become
24 aware of any other business that Citi was doing
25 involving Madoff or exposure to Madoff's investment

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1 advisory business?

2 A. No.

3 Q. To your knowledge were there any
4 internal Citi policies with respect to transactions
5 involving Madoff or Madoff exposure?

6 A. Specifically referring to Madoff?

7 Q. Yes.

8 A. No. I'm sure there's all kinds of
9 policies referring to all types of transactions.

10 Q. I'm asking if you are aware of any
11 black-listing or internal prohibitions on
12 transactions involving Madoff or exposure to Madoff.

13 A. No.

14 Q. While you were at Citi did you keep a
15 calendar or a diary in terms of appointments and the
16 like?

17 A. If there was it would be in the --
18 part of Outlook.

19 Q. Some people use it. Some don't. I
20 don't.

21 A. I didn't use it religiously. Some
22 things would be on there. Some things wouldn't.

23 Q. And if I understand correctly from
24 earlier this morning none of your calendars or
25 anything you took with you when you left Citi. Is

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1 that correct?

2 A. No. They're all electronic.

3 Q. Do you still have a copy of your
4 severance agreement?

5 A. You mean with me or somewhere?

6 Q. Not with you here today, but do you
7 maintain a copy?

8 A. Yes.

9 Q. When you and Mr. Markopolos met and
10 looked at the returns and the strategy, after you
11 did your one hour or so thinking about it and asking
12 questions what, if any, conclusions did you draw and
13 share with Mr. Markopolos about what you had read?

14 MS. REISBAUM: Objection.

15 A. The conclusion was that there was a
16 discrepancy and that there were other things that
17 really didn't make sense to me, so that was the --
18 the result of the -- of the mathematical analysis,
19 and then the next step was to say, you know, There's
20 something wrong going -- There's something wrong
21 here, you know, that somebody who's a broker/dealer
22 shouldn't have information on their -- you know, on
23 the web site. That doesn't make sense. It
24 indicates something's wrong without knowing exactly
25 what it is.

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1 Q. Did you get the sense that
2 Mr. Markopolos was coming to you for a
3 second-opinion type of thing or did Mr. Markopolos
4 have conclusions he had already reached that he had
5 drawn -- shared with you? I'm trying to understand
6 the process.

7 MS. REISBAUM: Objection.

8 Q. To the best of your --

9 A. I don't remember whether, you know,
10 he said to me, I'm suspicious, Would you look at
11 this, or, Hey, what do you think and afterwards
12 agree with me.

13 Q. What, if anything, did you understand
14 Mr. Markopolos was going to do after you shared your
15 thoughts with him?

16 A. I had no idea what he would do. He
17 didn't say, I'm going to do this, I'm not going to
18 do this. He didn't give any indication what the
19 bigger picture was or what his involvement was or
20 what the result was.

21 Q. And when you met Mr. Markopolos after
22 he became a fraud examiner the issue of Madoff and
23 whether that was a fraud never came up?

24 MS. REISBAUM: Objection.

25 Q. In that conversation?

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1 A. The conversation wasn't about that.
2 I don't remember him speaking about that.

3 Q. You do not.

4 A. I don't remember that. I remember a
5 lot of other things about the conversation, as I
6 said before.

7 Q. What type of things did you discuss
8 with him other than his new job?

9 MS. REISBAUM: Objection.

10 A. Most of the things had to do -- was
11 about I never heard of a fraud investigator before;
12 What do you do, How does it work. It was about
13 things like that. That was all new information to
14 me because most of my conversations are, you know,
15 I'm interested in these products, or, I want to hire
16 someone who had some back -- testing strategy.
17 Those are the types of things I'm used to having
18 with a customer. When somebody comes to me with a
19 completely different thing, that's weird. That's
20 something -- a conversation I'll remember. It's
21 different than the other hundred conversations I had
22 that year because I never spoke to someone who was
23 doing that kind of job.

24 Q. You mentioned the concept of
25 back-testing. Can you explain what that is?

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1 A. A back test is -- is if someone says,
2 I'm going to create a strategy, you know, I always
3 do this, or when these three things happen or this
4 happens I do this. Right? So any type of a
5 situation where you define a formal set of rules,
6 right, that if the proposal is, I'm considering
7 doing this going forward, right, and the answer is,
8 That's great, How was it done historically, and the
9 back test is a question of creating a -- a return
10 series or a bunch of them for different strategies
11 and for each one saying, Okay, What's the average
12 return, What's the standard deviation, What's the
13 best case, What's the worst case, In which cases
14 does it do poorly, What cases does it do well.

15 So it's a way to -- When someone is
16 thinking about doing something new, say it sounds
17 like a good idea, but how would it have done in the
18 past.

19 Q. Did you and Mr. Markopolos ever
20 discuss back-testing or attempting to replicate the
21 strategy that Mr. Madoff reported to use?

22 MS. REISBAUM: Objection.

23 A. Did he ask me to do that? No. When
24 I was playing around with the numbers did I do
25 anything that was a formal back test? No. Did I do

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1 something that may have -- I didn't do a formal back
2 test of the strategy.

3 Q. Again, to the best of your
4 recollection when you say "playing around with the
5 numbers" what are you talking about doing?

6 MS. REISBAUM: Objection.

7 Q. You can answer.

8 A. Well, seeing what the average return
9 of the S&P was, seeing what the standard deviation
10 was, seeing if you, you know, had different amounts
11 of all cash or collars, how wide it would be, what
12 the returns would look like, et cetera, seeing on
13 average, you know, what the volatility difference
14 was between the puts and the calls, and would you
15 make or lose money doing that, so -- So I guess that
16 would be -- so we were kind of looking at it, but a
17 back test would -- would mean, you know, getting
18 every single month a certain number and then
19 comparing it to something else.

20 Q. And that wasn't discussed with
21 Mr. Markopolos, the official or more formal
22 back-testing.

23 A. I may have looked at, you know, the
24 -- I may have pulled some data out to look at the
25 average returns and standard deviations in the S&P.

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1 I may have looked at what the option profile looked
2 like, but I'm not sure -- In a half-hour I wouldn't
3 have time to put every single option in there. I
4 could have said whether the options are cheap or
5 rich, so I may have done a sketch of something but
6 not a back test.

7 MR. FARLEY: I thank you for coming
8 in.

9 MR. BOCCUZZI: We just discussed at
10 the beginning, Leon and Emily signed the
11 confidentiality protective order and Cleary signed
12 it previously. My understanding is that the
13 deposition is confidential and if it's required to
14 formally designate it I would also designate it as
15 confidential as well.

16 MR. FARLEY: And also for the record,
17 we can speak with his counsel, but I may request a
18 copy of the severance agreement and confirm with you
19 that there are no documents. It was a little
20 confusing at the beginning in terms of whether a
21 search has been undertaken or not, but we can deal
22 with that.

23 (Deposition concluded at 2:05 p.m.)
24
25

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I, LEON J. GROSS, do hereby certify that I
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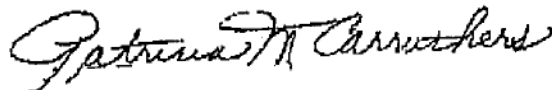
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